IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. —

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, THE CALIFORNIA ELECTRIC POWER COMPANY, a corporation, *Respondents*.

Petition for Writ of Review—Filed Aug. 29, 1951

To the Honorable the Supreme Court of the State of California:

The United States of America, by its Acting Assistant Attorney General James R. Browning, acting under the direction of the Attorney General, respectfully petitions this Honorable Court to review the order of the Public Utilities Commission issued on July 3, 1951, rehearing of which was denied on July 31, 1951. In support of this petition the United States respectfully shows:

I

The United States of America, through the Chief of the Bureau of Yards and Docks, Navy Department, owns and operates a Naval Ammunition Depot in Hawthorne, Nevada.

II

Respondent, California Electric Power Company (hereinafter sometimes called the Company), is a corporation engaged, among other activities, in the generation, distribution and sales of electric energy in the States of California and Nevada. Included among the Company's generation facilities are five hydroelectric projects (Projects No. 344 (San Gorgonia), 1388 (Poole), 1389 (Rush Creek), 1390 (Mill Creek) and 1394 (Bishop Creek) licensed under Part I of the Federal Power Act (16 U.S.C. 792 *et seq.*)).

III

2 Respondent, Public Utilities Commission of the State of California (hereinafter sometimes called the Public Utilities Commission), is an administrative agency of the State of California, one of whose functions is the regulation of certain rates, terms and conditions under which electric energy is sold in California.

IV

Under an agreement dated July 1, 1943, the Company has been supplying the United States of America, with its energy requirements at its Naval Ammunition Depot at Hawthorne, Nevada. The energy is delivered to the Navy Department at 55Kv at the Company's substation at Mill Creek in California; from this substation the Navy Department transmits the energy to the state boundary and thence into the State of Nevada where it is reduced to distribution voltage. The energy so furnished is in part generated at three of the Company's licensed hydroelectric projects referred to in paragraph II (Projects No. 1388 (Poole), 1389 (Rush Creek) and 1390 (Mill Creek). A substantial part of the energy so purchased by the Navy Department is resold by it to domestic and commercial customers located on the Naval Reservation.

V

On July 1, 1948, the Public Utilities Commission rendered its Decision No. 41798 on the Company's Application No. 28791 in which it found generally that the Company was in need of additional revenues and authorized the Company to file and make effective rates in accordance with numerous schedules attached as an exhibit to the decision. Among these schedules was Schedule P-2, covering "Power—General Wholesale Service"; this schedule was applicable to "all general wholesale power service except agricultural, irrigation and resale power," and "in the entire territory served excluding the City of San Bernardino."

VI

Following this decision, the Company attempted to terminate its contract with the United States, set forth in paragraph IV, by giving written notice, and thereafter sought to bill the United States at the rates provided in Schedule P-2. The United States refused to pay the rates prescribed in this schedule on the grounds, among
3 others, that the decision does not specifically refer to its contract with the Company and further that the Public Utilities Commission did not have jurisdiction to prescribe the rates for these sales by the Company to the United States.

VII

On August 8, 1949, the Company filed its First Supplemental Application to Application No. 28791 (referred to in paragraph V) with the Public Utilities Commission requesting a determination whether Schedule P-2 was, and had since October 1, 1948, been

applicable to the Company's sales of electric energy to the United States referred to in paragraph IV. The United States protested this application, appeared at the hearings thereon and was a party to the proceedings relative thereto. A hearing on this application was held on October 7, 1949, and although further hearings were scheduled, they were taken off the calendar when the Federal Power Commission indicated a desire to explore the question of jurisdiction.

VIII

On February 15, 1950, the Federal Power Commission issued an order to the Company, directing it to show cause, among other things, why the rates for the Company's sales of electric energy to the United States referred to in paragraph IV are not subject to the jurisdiction vested in the Federal Power Commission under the Federal Power Act (16 U.S.C. 792, *et seq.*). *In the Matter of California Electric Power Company*, F.P.C. Docket No. E-6269. On March 20 and 21, 1950, pursuant to mutual agreement between the Public Utilities Commission and the Federal Power Commission, concurrent hearings were held before both Commissions on, *inter alia*, the jurisdictional issues involved. The Legal Department of the Public Utilities Commission intervened in the Federal Power Commission proceedings and was a party thereto.

IX

On April 13, 1951, the Federal Power Commission issued its opinion and order (Opinion No. 212) holding that the terms and conditions of the Company's sales of electric energy to the United States referred to in paragraph IV were subject to its jurisdiction under the Federal Power Act; and directing that such sales be made under the terms of the contract between the Company and the United States, dated July 1, 1943. On June 5, 1951, the Federal Power Commission denied the applications for rehearing filed by the Company and the Legal Department of the Public Utilities Commission and on June 20, 1951, the Company filed in the United States Court of Appeals for the Ninth Circuit a Petition to Review and Set Aside the order of the Federal Power Commission referred to above in this paragraph. *California Electric Power Company* v. *Federal Power Commission*, Court of Appeals No. 12987.

X

On July 3, 1951, after the Federal Power Commission issued its order holding that exclusive jurisdiction over the Company's sale to the Navy was vested in it, the Public Utilities Commission issued its opinion and order (Decision No. 45913) holding that exclusive

jurisdiction over these sales by the Company to the United States was vested in it (and not in the Federal Power Commission) and authorizing the Company to charge and collect for these sales, the rates prescribed in its Schedule P-2 referred to in paragraph V. A copy of this Opinion is attached hereto, marked Exhibit "A" and by this reference made a part hereof. On July 19, 1951, the United States, being aggrieved thereby, filed with the Commission a petition for rehearing, setting forth the particulars in which the United States alleged the Commission committed error. A copy of this Petition for Rehearing is attached hereto, marked Exhibit "B" and by this reference made a part hereof. On July 31, 1951, the Commission denied the petition for rehearing, without hearing or modification of its order of July 3, 1951.

XI

The United States avers that the Commission, in rendering its opinion and order of July 3, 1951 and in denying the application of the United States for rehearing thereon, committed error and acted without and in excess of its powers and jurisdiction particularly as follows:

(1) In holding that the sales of electric energy by the Company to the United States, referred to in paragraph IV, are not in interstate commerce, either under the general law or within the meaning of the term as used in *Public Utilities Commission* v. *Attleboro Steam and Electric Co.*, 273 U. S. 83,

5

(2) In holding that even if these sales were in interstate commerce, the provisions of Parts I and II of the Federal Power Act (16 U.S.C. 792 *et seq.*), permitted it, rather than the Federal Power Commission, to regulate these sales,

(3) In rendering these rulings in square conflict with the conclusions of the Federal Power Commission on these very issues in a proceeding in which the Public Utilities Commission's Legal Department participated as a party and the decision in which is now under review in the Court of Appeals for the Ninth Circuit, and

(4) In construing its Decision No. 41798 of July 1, 1948 to cover these sales to the United States, and ruling that its Schedule P-2 applied to these sales, all as set out in greater detail in the United States' Petition for Rehearing before the Public Utilities Commission, attached hereto as Exhibit "B."

XII

The United States has not the right to appeal from the Commission's Opinion and Order of July 3, 1951, and has no plain, speedy or adequate remedy other than by this Writ of Review.

The United States is a party beneficially interested in this proceeding, and the names of the parties interested whose rights will be affected by this Petition are the United States, the Petitioner herein, and the Public Utilities Commission and the Company, both Respondents herein.

XIII

The United States is applying to this Court because it is provided in the Public Utilities Act, Section 67, that a Petition for Writ of Review may be addressed to this Court in such cases.

WHEREFORE, the United States prays:

(1) That a Writ of Review issued out of this Court to the Public Utilities Commission commanding it to certify fully to this Court at a specific time and place the records and proceedings in said First Supplemental Application to Application No. 28791, and that the same be inquired into and determined by this Court.

(2) That said matters and record be fully determined and considered by this Court, and that it be ordered, adjudged and decreed that the Order made by the Public Utilities Commission in this matter against the United States be annulled, vacated and set aside.

(3) That in the meantime the Public Utilities Commission and the Company be required to desist from further proceedings in said matter to be reviewed, and that the Public Service Commission be required to refrain from any further action therein.

(4) That the United States recover its costs herein; and for such further and additional relief as may be proper and just in the premises.

DATED: this 27th day of August, 1951.

JAMES R. BROWNING
James R. Browning,
Acting Assistant Attorney General
PAUL A. SWEENEY
Paul A. Sweeney,
MELVIN RICHTER
Melvin Richter,
Attorneys, Department of Justice.
/s/ R. A. MCMILLAN,
Asst. U. S. Attorney

Duly sworn to by Melvin Richter. Jurat omitted in printing.

7 CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served the above "Petition for Review," upon Respondents Public Service Commission of the State of California, and California Electric Power Company by mailing a copy thereof properly addressed, postage prepaid, to:

Public Utilities Commission of the
State of California
San Francisco 2, California
Henry W. Coil, Esquire
care California Electric Power Company
Riverside, California

(SEAL) MELVIN RICHTER
Attorney, Department of Justice

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8 **Exhibit "A" to Petition**

Decision No. 45913

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application No. 28791—1st and 2nd Supplemental

APPLICATION OF CALIFORNIA ELECTRIC POWER COMPANY FOR AN INCREASE IN RATES.

Henry W. Coil, for applicant, California Electric Power Company; *Fred E. Parker* and *L. B. B. Lindstrom*, for Mineral County Power System; *Oliver Rands, Hamilton Treadway*, and *F. W. Denniston*, for the United States Navy; *Boris H. Lakusta*, for the Commission's staff.

Opinion

California Electric Power Company, by its first and second supplemental applications in this proceeding, seeks determinations whether the Commission's Decision No. 41798 of July 1, 1948, authorizing certain rate increases, applies, respectively, to sales to the Navy, for use of the Government's Naval Ammunition Depot, Hawthorne, Nevada, and to sales to Mineral County Power System for resale to consumers in Nevada. Applicant requests that such determinations be made in the affirmative, thus making the utility's Schedule P-2 applicable to the sales to the Navy and its Schedule P-3 applicable to the sales to Mineral County Power System. Should the Commission construe the decision not to apply, applicant seeks the establishment of appropriate rates for such sales.

Both supplemental applications refer to the matter of jurisdiction and the position is taken that jurisdiction lies in the California Commission rather than in the Federal Power Commission.

A hearing on the applications was held on October 7, 1949.
9 The evidence received at that time related only to the questions whether Decision No. 41798 is to be construed to apply to the sales referred to and whether, as related to such sales, the rates set forth in such decision, or some other rates, are reasonable. A further hearing was scheduled but taken off calendar when the Federal Power Commission evinced, through correspondence, a desire to explore the question of jurisdiction. In implementation thereof, on February 15, 1950, it issued an order to show cause against California Electric Power Company. On March 20 and 21, 1950, pursuant to mutual agreement between that Commission and this, a concurrent hearing was held which, in so far as this Commission was concerned, bore solely upon the jurisdictional question. It was announced by Commissioner Rowell that, if additional evidence should be deemed advisable at a later date, due notice would be given.

It should be stated at the outset that the Commission is now satisfied, after a careful weighing of the record, that no further evidence is necessary, satisfactorily to dispose of the issues raised by the two supplemental applications. Accordingly, the order herein will include submission.

California Electric Power Company Operations.

California Electric Power Company renders public utility electric service in southeastern California in parts of Mono, Inyo, Kern, San Bernardino, Riverside, and Imperial counties. Its Nevada Division serves parts of Nye and Esmeralda counties, Nevada. Fifty-five per cent of all electricity supplied by the company comes from its own generating sources. The other forty-five per cent is obtained from Southern California Edison Company, the Department of Water and Power of the City of Los Angeles, and neighboring electric production agencies with which California Electric maintains interconnections.

10 During 1950, California Electric served an average of about 56,000 customers, 98 per cent of whom were in California. Residential and domestic customers purchased 11 per cent, rural customers, 15 per cent, industrial and commercial customers, 61 per cent, and other customers, 13 per cent, of California Electric's energy sales.

The company's production sources are interconnected with a network of high-voltage lines extending southerly from Mono County to San Bernardino about 300 miles along the easterly slope of the

Sierra Nevada Mountains, also extending throughout its main system around San Bernardino and Riverside, and easterly from Victorville some 200 miles to Hoover Dam Power Plant. In 1950, the maximum system demand was 123,900 kw.

The two customers, Mineral County Power System, with a demand of about 1,000 kw, and the Navy, with a somewhat greater demand, are served in California from the 55 kv station bus at California Electric's Mill Creek generating plant. Each customer owns and operates a 55 kv line, including terminal switching facilities, extending from Mill Creek to Hawthorne, Nevada. The lines are about 55 miles in length, about half the distance being in California and the other half in Nevada. During periods of emergency trouble, these customers have arranged to use the more reliable Navy line jointly. California Electric adjusts its billing to conform to the disposition of deliveries upon advice from the customers. Mineral County Power System resells the energy it purchases to its retail customers in Nevada. The Navy uses its deliveries, supplemented by its own fuel generating plant, for the power and energy requirements of its industrial activities and for the residential and commercial needs of employees or personnel housed at the military reservation.

Construction of Decision No. 41798.

11 In Application No. 28791, California Electric sought a general increase in rates. It proposed increases in all of its filed tariff rates and in a number of special contract rates. It did not request authority to increase the rates contained in the then effective special contracts applicable to sales to the Navy and to Mineral County Power System.

For the rate proceeding, studies of the trend and projected level of applicant's revenues and expenses were made by applicant, by other interested parties, and by engineers of this Commission's staff. As can be seen from the exhibits in the proceeding, from the annual reports of applicant to this Commission, and from the testimony of the Electrical Engineer of this Commission, the revenues and expenses in connection with the sales to the Navy and Mineral County Power System were included in the statistics upon which the earning studies were based. In Decision No. 41798, the Commission concluded that applicant was entitled to an increase in rates. In prescribing rates, it undertook to spread the increase equitably among the several classes of consumers in accordance with accepted practice. The Commission indicated its dissatisfaction with special rate contracts and directed applicant to discontinue a substantial number of special rates. It prescribed Schedules P-2 and P-3 for customers of the same type and kind as the Navy

and Mineral County Power System, respectively. It made those tariffs applicable to all similar customers on the California system except in the City of San Bernardino. It further satisfied itself that the credit for deliveries to the Nevada system was at a level substantially comparable to the wholesale power schedule. By establishing such rates, the Commission was satisfied that each customer would be required to pay no more than was necessary and that no customer would obtain service at the expense of other customers.

12 Mineral County Power System and the Navy were served under special contract rates differing from filed tariff rates for a number of years. The rates effective for Mineral County Power System during the pendency of the rate proceeding, Application No. 28791, were those set forth in a contract dated October 5, 1945, which specified a term of three years. The rates applicable to the Navy were set forth in a contract effective for the period July 1, 1943, to June 30, 1944, and thereafter until sixty days' written notice by either party.

The rates prescribed by Decision No. 41798 became effective August 1, 1948. By letter dated July 30, 1948, California Electric notified the Navy of the termination of the July 1, 1943, contract, to be effective October 1, 1948. The contract with Mineral County Power System by its own terms expired on October 4, 1948. Since no new contract rates were sought for either the Navy or Mineral County Power System, the Schedules P-2 and P-3, respectively, became applicable on October 1 and October 5, 1948, respectively, unless Decision No. 41798 should be construed not to apply.

Decision No. 41798 does apply, as we construe it, to the sales to the Navy and Mineral County Power System. It is true that the decision does not refer specifically to such sales, but there can be no doubt from its comprehensive language and general tenor, to say nothing of the evidence upon which it is based, that it was intended to cover all sales of California Electric. The decision states:

"As previously noted, a number of applicant's deliveries to large customers are made under special contract agreements at rates other than those contained in the filed tariffs. Under the request contained in the application, the Commission is asked to authorize applicant to make effective certain changes in special contracts. Several of the existing contracts under their present terms and conditions provide for the application of any newly effective tariffs authorized. The remaining contracts providing for deliveries at special rates
13 either have expired or, within the next twelve months, will expire or may be terminated by applicant. Under these circumstances it appears unnecessary for the Commission to

order at this time the termination or extensive modification of any existing special contracts."

The decision further states:

> "The tariffs herein authorized are intended for application to all electric sales by applicant to customers in California, excepting only those sales to other distributing agencies with whom applicant has interchange agreements. . . . In any one area a single rate will apply to all service to domestic customers; . . . a large block power rate will provide for the major industrial and commercial deliveries; . . . and a resale power rate will apply to deliveries for resale purposes."

We indicated in the decision that the conditions surrounding the utility's service no longer warranted special contracts except in rare instances. Accordingly, we ordered that such contracts in all instances but four be terminated on July 31, 1948, or thereafter at the earliest dates possible under the terms of the respective contracts.

Having construed our Decision No. 41798 as applicable to the sales to the Navy and Mineral County Power System, we turn to the question of jurisdiction.

Jurisdiction.

The question is presented whether California is precluded from jurisdiction over the sales to the Navy and Mineral County Power System, either by virtue of the interstate commerce clause operating of its own force, or by enactment of the Federal Power Act (1935, c. 687, 49 Stat. 841, 16 USCA Sec. 791, *et seq.*). In arriving at the conclusion that jurisdiction is not precluded, we have been substantially aided by the several briefs filed in connection with the concurrent hearing. We are not unmindful that the Federal Power Commission, in its Opinion No. 212 issued on April 13, 1951, asserted jurisdiction, Commissioner Smith dissenting. It may be noted that the Federal Examiner had prepared an 14 opinion stating that the Federal Power Commission was without jurisdiction. Rehearing was denied on June 6, 1951.

We will consider separately the sales to the two customers.

Sales to the Navy.

The service to the Navy was begun, as indicated above, in 1943 pursuant to a contract for the sale of all energy required by the government "for use of the Government's Naval Ammunition

Depot, Hawthorne, Nevada, except such electric energy as may be generated by the government on said premises." The energy purchased by the Navy is consumed wholly on the Naval reservation which, in addition to the installations devoted directly to Naval use, includes the quarters for Naval personnel described as "public quarters" and the "Navy Low-Cost Housing Project" known as Babbitt, which provides living quarters and facilities for those civilians connected directly or indirectly with the Navy's activities on the reservation.

The evidence indicates that, while a large percentage of the energy furnished to the Navy is derived from licensed projects, there are times when all or a portion of it comes from non-licensed sources.

As stated above, the energy is delivered by California Electric to the Navy at Mill Creek and transmitted by the Navy over its own line to Nevada for consumption.

It is our opinion that upon such facts there is nothing either in the interstate commerce clause of the Federal Constitution or in the Federal Power Act to preclude our jurisdiction.

Considering first the interstate commerce clause, the United States Supreme Court held in *P. U. C.* v. *Attleboro Steam and Electric Co.* (1927), 273 U. S. 83, 71 L. ed. 549, P.U.R. 1927B 348, in a case where no federal statute delineating state and federal jurisdiction was involved,[1] that a state cannot regulate the rates charged by a local electric utility for current sold to a foreign electric utility for resale in another state and delivered at the state boundary, inasmuch as the interstate business carried on between the two utilities is essentially national in character, and state regulation would constitute a direct burden upon interstate commerce, placing a direct restraint on that which, in the absence of federal regulation, should be free.

Even if it be assumed that the sales by California Electric to the Navy are in interstate commerce, regulation by the State of California of the rates for such sales does not fall within the proscription of the *Attleboro* decision. Only one state, viz., California, is directly concerned, *since no state can have jurisdiction over the Navy, an arm of the federal government.* Nevada has no jurisdiction over the rates the Navy pays to California Electric, nor over the rates the Navy charges its personnel and tenants. *California's jurisdiction arises solely from its authority over California Electric.* Thus, there is absent that potential clash of respective state

[1] The Federal Water Power Act (1920, Ch. 285, 41 Stat. 1063, later incorporated as Part I of the Federal Power Act, 16 USCA, Sec. 792, *et seq.*) was in effect at the time of the *Attleboro* decision but was not applicable because the electric power in question was not derived from projects licensed by the federal government.

interests which underlay the conclusion in the *Attleboro* decision.

Perhaps an even more conclusive circumstance for the proposition that the interstate commerce clause does not preclude California jurisdiction is the fact that electric rates prescribed by our Commission are *not* the rates which a utility must charge an arm of the United States Government. The Commission in 1942 issued General Order No. 96, which provides in Section X-B, that
16 an electric utility may furnish electric service "at free or reduced rates or under conditions otherwise departing from its filed tariff schedules to the United States and to its departments." (See Public Utilities Act, Section 17.) Thus, while the difference between charges under filed tariffs which have been found reasonable, and the revenue actually received for service supplied to the federal government, would have to be borne by California Electric rather than its customers, the federal government is in no way burdened in its negotiations with the utility by a California rate order.

It follows that since a sister state is not deprived of anything to which it is entitled and the federal government is in no way burdened, by the exercise of California jurisdiction, such jurisdiction does not impose an undue burden upon interstate commerce and, therefore, does not violate the interstate commerce clause of the Federal Constitution.

It should be noted in passing that the situation here presented is distinguishable from the *Attleboro* decision not only for the reasons already stated but because the sales to the Navy are not sales by one utility to another utility for resale. The Navy is not in business; its purchases of electricity are in furtherance of its national defense obligation; and its undertaking to provide electric service to its personnel and tenants at Hawthorne is merely incidental thereto.

Not only do we conclude that the interstate commerce clause presents no barrier to the exercise of our jurisdiction over the sales to the Navy, but we find nothing in the Federal Power Act taking such jurisdiction away. Such conclusion is reached even if it be assumed that Part I of the Act (setting forth the provisions applicable where power from licensed projects is involved) and Part II (applying "to the sale of electric energy at wholesale in interstate commerce but . . . not . . . to any other
17 sale") both apply, or that either Part I or Part II applies. See *Safe Harbor Water Power Corp.* v. *FPC* (CCA 3d, 1941), 124 F. 2d 800, cert. dnd. (1942), 316 U. S. 663, 86 L. ed. 1740; *Safe Harbor Water Power Corp.* v. *FPC* (CA, 3d, 1949), 179 F. 2d 179, cert. dnd. (1950), 339 U. S. 957, 94 L. ed. 1368.

Turning first to Part I (derived from the Federal Water Power Act (1920, ch. 285, 41 Stat. 1063)), if it be assumed that the sales

to the Navy are in interstate commerce, the applicable language is found in Section 20 providing, in so far as pertinent, that when:

> "said power or any part thereof [presumably any power furnished by a licensee] shall enter into interstate or foreign commerce the rates . . . and the services . . . by any . . . licensee . . . or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable . . . to the customer . . .; and whenever any of the states directly concerned has not provided a commission or other authority to enforce the requirements of this section within such state . . . or such states are unable to agree through their properly constituted authorities on the services . . . or . . . rates . . . jurisdiction is hereby conferred upon the [Federal] Commission . . . to regulate . . . so much of the services . . . and . . . rates . . . therefor as constitute interstate or foreign commerce . . ."

It will be observed that Congress has conferred jurisdiction on the Federal Power Commission under Section 20 only if any of the states directly concerned has not provided a commission or other authority to enforce the requirements of Section 20 within such state ("requirements" apparently referring to the provision that the rates and services by licensees or persons purchasing from licensees for resale in public service shall be reasonable), and furthermore, even though the requisite state commissions or other authorities have been provided, only if the states directly concerned are unable to agree on the services or rates through their properly constituted authorities.

18 Assuming that the language of Section 20 applies at all, it is our opinion that, under such language, the sales to the Navy are excluded from Federal Power Commission jurisdiction. The California Commission is the kind of state "commission or other authority" contemplated by Section 20, for it has comprehensive power to regulate electric utility rates and service "within such state," viz., California. We have already pointed out, in considering the interstate commerce clause, that California is the only state which can, because of its authority over California Electric, affect the sales to the Navy. Nevada cannot order the Navy to pay a certain rate for electricity purchased, nor can it order the Navy to charge a certain rate for electricity distributed. It follows that, since only one state is "directly concerned," no question can arise of inability as between two states directly concerned to agree on the reasonableness of the rates charged to the Navy. Thus, Federal Power Commission jurisdiction is excluded because the

two conditions to its exercise, as prescribed by Congress in Section 20, are absent.

Turning to Part II of the Federal Power Act (enacted as part of the Public Utility Act of 1935, ch. 687, 49 Stat. 803), it is declared in Section 201(b) that:

> "The provisions of this Part shall apply . . . to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy . . ."

In addition to this jurisdictional language, it is provided in the policy declaration of Section 201(a) that federal regulation of the "sale of such [electric] energy at wholesale in interstate commerce is necessary in the public interest, such federal regulation, however, to extend only to those matters which are not subject to regulation by the states."

Putting aside the question whether the sales are in interstate commerce, it is clear that the sales to the Navy do not fall within the language "sale of electric energy at wholesale," which is defined by Section 201(d) to mean "a sale of electric energy to any person for resale." The sales in question are neither sales to a "person" nor are they sales "for resale."

The word "person" is defined by Section 3(4) of the Act to mean "an individual or corporation." A "corporation" by Section 3(3):

> "means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include 'municipalities' . . ."

It is obvious that the Navy is not a "person" as defined.

Not only is the Navy not a "person" but the sales to it cannot properly be described as "sales for resale." We have already alluded to the contract entered into in 1943 whereby California Electric agreed to supply "all electric energy required by the Government . . . for use of the Government's Ammunition Depot . . ." The evidence shows that the use in fact made of the energy furnished is consistent with such language. All of the energy is consumed on the Naval reservation; part is used in the Depot's industrial operations or dissipated in system losses; the balance is used by the individuals and business establishments located on the government reservation. Individuals may reside or conduct business only so long as their presence is consistent with the Navy's obligations. The lease agreements with those occupying "public quarters" and with those occupying the low-cost housing project known as Babbitt, both provide that the rental privilege ceases

upon termination of employment. For the business concessions, the government issues a "Revocable Permit" reciting that the concession is "for accommodation of employees of the Depot."
20 It follows that the sales to the Navy are in effect for its sole use. It is true that, in supplying electricity to those living or conducting business at the reservation, the Navy is in a sense "reselling" energy purchased from California Electric Power Company, but it is clear that the term "sale for resale" in Part II of the Federal Power Act was intended to refer to a very different situation. The courts have repeatedly pointed out that Part II was enacted to close the gap in utility regulation revealed by the *Attleboro* decision. See *Jersey Central Power & Light Co.* v. *FPC* (1943), 319 U. S. 61, 87 L. ed. 1258, 63 S. Ct. 953. The Navy is certainly not a public utility. Even assuming it would not be precluded from that status by virtue of its position in the federal government it could not be deemed a public utility by virtue of furnishing electricity to tenants whose continued tenancy depends upon the needs of the Navy landlord.

We are satisfied, in the light of the foregoing observations, that the sales to the Navy are not to a "person for resale" under Part II of the Federal Power Act, but quite aside from that conclusion jurisdiction is denied the Federal Power Commission by the proviso clauses of Sections 201(a) and 201(b) of Part II. Section 201(a) declares that federal regulation shall "extend only to those matters which are not subject to regulation by the States" and Section 201(b), in making Part II applicable to "sales at wholesale in interstate commerce", contains the proviso that Part II "shall not apply to any other sale of electric energy." Taking these sections together and construing them in the light of their statutory history, it is plain that Congress intended the Federal Power Commission to have jurisdiction only in that area where the United States Supreme Court had declared state regulation over sales could not be exercised because of the interstate commerce
21 clause. See *Connecticut Light and Power Co.* v. *FPC* (1945), 324 U. S. 515, 89 L. ed. 1150, 65 S. Ct. 749. In the case presented here, we have already pointed out that the interstate commerce clause does not apply to prevent state jurisdiction and we have further pointed out that the machinery set up by Congress in Section 20 of Part I to enable states upon certain conditions to exercise jurisdiction without burdening interstate commerce is available upon the facts shown and makes it possible for California to regulate the sales to the Navy. Thus, both under the Constitution and Part I of the Federal Power Act, California may exercise jurisdiction. Therefore, the provisos of Sections 201(a) and 201(b) in Part II operate to deny Federal Power Commission

jurisdiction under Part II. It follows that there is nothing in Part II to prevent the exercise of California jurisdiction over the sales in question, and we so conclude.

Sales to Mineral County Power System.

As previously noted, California Electric sells electric energy to Mineral County Power System at Mill Creek, and the latter transmits the energy over its own line to Nevada, reselling to local consumers in Nevada. As in the case of the Navy, the evidence indicates that, while a large percentage of the energy is derived from licensed projects, there are times when all or a portion of it comes from non-licensed sources.

Many of the propositions set forth above in support of our conclusion that we may properly exercise jurisdiction over the sales to the Navy apply with equal force to the sales to Mineral County Power System. However, there are certain differences which will be pointed out in the analysis which follows.

We have stated that independently of any consideration of federal statute, the interstate commerce clause does not operate to prevent California from exercising jurisdiction over the sales
22 to the Navy inasmuch as no clash between state interests can be involved and inasmuch as the national government is not burdened by the exercise of California jurisdiction. A different situation exists with the sales to Mineral County Power System, for the State of Nevada clearly has an interest in the cost of electricity to Mineral County Power System and the rates in turn charged by it to its customers. Turning to the Federal Power Act, however, we are satisfied that the machinery set up in Section 20 of Part I, which allows state jurisdiction under certain conditions, when applied to the facts in issue enables this Commission to exercise jurisdiction without interfering with the rights of Nevada and without imposing an undue burden on interstate commerce. We are further satisfied that Part II does not apply because the sales to Mineral County Power System are not to a "person" as defined. We are further satisfied that, even if Part II were construed to apply, the proviso clauses alluded to in Sections 201(a) and 201(b) of Part II operate to preserve the exercise of jurisdiction recognized in Part I.

Turning specifically to Part I, we have pointed out that two conditions must, by the terms of Section 20, be present before states directly concerned may exercise jurisdiction: (1) they must have commissions with authority to enforce the requirements of Section 20 within the state; (2) such states must not be unable to agree upon the rates to be charged. In the case of the sales to Mineral County Power System, (1) each of he states directly con-

cerned, viz., California and Nevada, *has* provided "a commission or other authority to enforce the requirements of this section within such state," and (2) such states *have not*, through their properly constituted authorities, been shown unable to agree on the rates for the sales in question.

Considering the first of these propositions, it cannot be seriously contended that the California Commission, entrusted
23 as it is with very broad regulatory authority over the rates and services of utilities within the state, fails to qualify as "a commission or other authority to enforce the requirements of this section within such state." While the Nevada Public Service Commission does not exercise as great a degree of control over Mineral County Power System as it does over private organizations engaged in public service in Nevada, it nevertheless has express jurisdiction over Mineral County Power System's rates. Nevada Statutes of 1925 provide at page 55:

> "Sec. 16. The maintenance and operation of said Mineral County Power System shall be under the control, supervision and authority of the board of managers, and rates charged to consumers for sale and distribution of electric energy and current, and the tolls from telephone service, with the terms and conditions thereof, shall be fixed by said board, *subject to the supervision of the Nevada Public Service Commission, who may revise, raise or lower the same.*" (Emphasis added.)

The question makes clear that the Nevada Public Service Commission is, with respect to Mineral County Power System's rates, "a commission or other authority to enforce the requirements of this section within such state."

The Federal Power Commission, adopting the contentions of its counsel, has declared in its Opinion No. 212, above referred to, that in order to qualify as "a commission or other authority to enforce the requirements of this section within such state," a commission must have authority not only to regulate the rates charged by a utility but the rates such utility pays for power purchased outside the state and transmitted in interstate commerce. It is claimed that the Nevada Commission does not qualify because it is not empowered to fix the rates Mineral County Power System pays to California Electric Power Company in California. We are convinced, however, that Congress did not contemplate state
24 commissions with powers beyond those normally entrusted to them, powers which might indeed be found to be unconstitutional.

Turning to the second proposition, there was no evidence whatever to indicate that California and Nevada "through their properly constituted authorities" were "unable to agree." No evi-

dence whatever was offered respecting any course of dealing, or any absence thereof, between the California and Nevada commissions, or between any other authorities of the respective states. The Chairman of the Nevada Public Service Commission, stated at the concurrent hearing that his Commission had determined not to participate in the cooperative procedure and that he would appear only as an interested party. He further stated:

> "The State of Nevada, therefore, is not interested except to the extent that the users are living in Nevada and, therefore, I will say that we are very much interested. I am not prepared to state at this time what the position of our Commission would be, until after this matter of jurisdiction has been decided. That is all the statement I wish to make."

These words make apparent that there was no inability to agree, and that the Nevada Commission has adopted a neutral position.

It follows that, since neither of the circumstances prevail upon which Federal Power Commission jurisdiction is conditioned under Section 20, jurisdiction properly may be exercised by this Commission over the sales to Mineral County Power System, at least until such time as the properly constituted authorities of California and Nevada are unable to agree on the rates to be charged for such sales.

Considering next the effect of Part II upon our jurisdiction, we observed in discussing the sales to the Navy that that Part gives the Federal Power Commission jurisdiction only over sales "to any person for resale." The sales to Mineral County Power System undoubtedly are "for resale" but they are not sales to a "person." Section 3(4) defines a "person" as "an individual or corporation." A "corporation" by Section 3(3) "shall not include 'municipalities' as herein defined." A "municipality" by Section 3(7) means "a city, county, irrigation district, drainage district, or other political subdivision or agency of a state competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power . . ." Mineral County Power System, as we understand it, is the operating name for the County of Mineral in its proprietary capacity as the seller of electric energy at retail. Thus, it is a "municipality" as defined in Section 3(7) and, therefore, is excluded from the definition of a "corporation" in Section 3(3) and from the definition of a "person" in Section 3(4). It follows that Part II does not apply to the sales to Mineral County Power System.

Finally, even if the sales to Mineral County Power System were to be regarded to be within the purview of Part II, the proviso clauses of Sections 201(a) and 201(b) apply. Our views heretofore stated respecting them apply with equal force. Since by the

provisions of Part I, Section 20, the California Commission upon the facts may exercise jurisdiction, the proviso clauses in Part II operate to ensure that jurisdiction by denying it to the Federal Power Commission.

In the light of the conclusion we have reached respecting the construction properly to be placed upon our Decision No. 41798 and the conclusion that we have jurisdiction over the sales both to the Navy and to Mineral County Power System, we herewith order as follows:

Order

The first and second supplemental applications of Cali-
26 fornia Electric Power Company having been duly considered after hearing and the filing of briefs, and it appearing that no further hearing is necessary to dispose of any of the issues presented, and the Commission finding that it has jurisdiction in the premises,

IT IS HEREBY ORDERED that the matters upon each of the supplemental applications herein are submitted.

IT IS FURTHER ORDERED that California Electric Power Company is hereby authorized to charge and collect from the United States for electric service furnished at the Mill Creek hydroelectric generating plant and transported by the United States to the United States Naval Ammunition Depot at Hawthorne, Nevada, the rates prescribed for such service by Decision No. 41798, viz., the rates set forth in Schedule P-2 attached to such decision.

IT IS FURTHER ORDERED that California Electric Power Company is hereby authorized and directed to charge and collect from Mineral County Power System for electric service furnished at the Mill Creek hydroelectric generating plant and transported by Mineral County Power System or the United States into Nevada for resale by Mineral County Power System, the rates prescribed for such service by Decision No. 41798, viz., the rates set forth in Schedule P-3 attached to such decision.

IT IS FURTHER ORDERED that California Electric Power Company take all reasonable steps to collect from Mineral County Power System the charges hereinabove referred to from the time that such charges become effective.

Dated, San Francisco, California, this 3rd day of July, 1951.

(SEAL)

R. E. MITTELSTAEDT
JUSTUS F. CREAMER
HAROLD P. HULS
KENNETH POTTER
PETER E. MITCHELL
Commissioners

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Exhibit "B" to Petition

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application No. 28791—1st and 2nd Supplemental Application of California Electric Power Company for an Increase in Rates

Petition of the United States for Rehearing, for Extension of Effective Date of Order, and for Suspension of Operation of Order

The United States of America hereby petitions the Public Utility Commission of the State of California for a rehearing of the matter determined by the Commission's Decision No. 45913 on July 3, 1951, for the extension of the effective date of the order entered therein, and for the suspension of the operation of said order until final determination is had of the petition entitled *California Electric Power Company* v. *Federal Power Commission* filed in the United States Court of Appeals for the Ninth Circuit by California Electric Power Company to Review and Set Aside the Order of the Federal Power Commission entered in Docket No. E-6269, In the Matter of California Electric Power Company, Opinion No. 212 of April 13, 1951.

I

The Petitioner is a sovereign power represented by the Chief of the Bureau of Yards and Docks, Navy Department, and was represented before this Commission in the hearing of the 1st Supplemental Application to Application No. 28791 and is a party to the proceeding.

28

II

The Petitioner applies for a rehearing for the reasons:

(1) That the record of the proceeding is incomplete in regard to the question of whether the rate increase authorized by the Commission's Decision No. 41798 of July 1, 1948, should be applicable to sales of electric service to the U. S. Naval Ammunition Depot at Hawthorne, Nevada, in that there was no opportunity or provision for the filing of briefs or the making of oral argument.

(2) That there was no showing before this Commission nor any finding by this Commission that an increase in rates for electric service to U. S. Naval Ammunition Depot at Hawthorne, Nevada, was justified, and, indeed, the uncontroverted testimony indicated that the such existing rates more than fully compensated the applicant for the cost of service to U. S. Naval Ammunition

Depot at Hawthorne, Nevada, including a reasonable rate of return for facilities allocable to the providing of this service.

(3) That said Decision No. 41798 in specifying the special contracts to be cancelled by the Company did not include contract NOy-7342 for service to the U. S. Naval Ammunition Depot at Hawthorne, Nevada, and further stated that:

> "It is recognized that occasionally there exist with respect to electricity sales and deliveries to a customer extraordinary circumstances which are not provided for in a filed tariff designed for general application to a class of customers." (page 16).

In the hearing on October 7, 1949, extensive and uncontroverted evidence was introduced showing that the conditions for pro-
29 viding service to the Hawthorne Naval Depot were unlike those obtaining for service to any customers under the filed schedules to wit:

(a) that power is taken at the transmission voltage of 55 KV at the Company's Mill Creek generating station,

(b) that the oil switching equipment used by the Company at its Mill Creek Station to furnish service to the Mineral County Power System and to the Hawthorne Naval Depot is owned by the United States,

(c) that it is transmitted over a 55-mile line owned and maintained by the United States,

(d) that it is distributed by means of lines and equipment owned and maintained by the United States,

(e) that this line is used, without expense to the Company, to carry power to Mineral County Power System whenever a breakdown occurs in the transmission line serving that load, and that in such cases Mineral County's energy consumption is measured by a Navy-owned and operated meter located at Hawthorne, Nevada, while Mineral County is billed directly by the Company on the basis of this Navy-meter reading,

(f) that the United States maintains standby generating facilities at the Hawthorne Naval Depot with a capacity of 2800 KVA to serve either the Depot or Mineral County Power System in case of line breakdown.

The Commission's Decision No. 45913, however, fails to give proper weight to or consideration of this evidence, and, in construing the earlier Decision 41798 also failed to apply the above-quoted principle regarding special contracts to the facts at issue.

30 (4) That the Federal Power Commission has exclusive jurisdiction over the conditions and rates of electric service supplied by the Company to U. S. Naval Ammunition Depot at Hawthorne, Nevada, pursuant to the Federal Power Act, 16 U.S.C. 792 to 825, for the reasons set forth in said Opinion No. 212 of the Federal Power Commission.

(5) That the orders contained in said Opinion No. 212 of the Federal Power Commission, until set aside, have the force of law no less so than a specific act of the Congress of the United States; and the effect of those orders is to exclude any exercise of a conflicting state power by reason of the supremacy clause of the United States Constitution (Article 6, Clause 2).

(6) That the evidence and questions of law regarding jurisdiction involved in this proceeding are identical to those involved in Federal Power Commission Docket No. E-6269 and, being questions of federal law, the orderly and efficient administration of justice will best be served by a single proceeding and that, the petition *California Electric Power Company* v. *Federal Power Commission* in the United States Court of Appeals for the Ninth Circuit, in which proceeding the Commission may intervene as an interested party.

(7) That California Electric Power Company will stand in contempt of the Federal Power Commission's Order in Opinion No. 212 if it attempts to charge and collect the rates purportedly authorized by this Commission's Order in Decision No. 45913, and it is unseeming that this Commission should thus authorize acts by a public utility company that will place it in contempt of
31 the orders of a federal agency whose orders have the force of law.

III

The Petitioner further asks that the effective date of the order in Decision No. 45913 be extended for the period of the pendency of this petition for rehearing because of the importance of the issues involved herein, because of the conflict between the rulings of this Commission and of the Federal Power Commission, and because of the fact that this decision, dated July 3, 1951, was received by the Petitioner in Washington on July 9, 1951, thereby providing insufficient time for the Petitioner to submit this petition ten days or more before the effective date of the order.

IV

The Petitioner hereby petitions for the suspension of the operation of the Order contained in this Commission's Decision No.

45913, whether the petition for rehearing is granted or denied, until final determination is had of the petition *California Electric Power Company* v. *Federal Power Commission* filed in the United States Court of Appeals for the Ninth Circuit because of the importance of the issues involved herein and for reasons (4) through (7) set forth in Paragraph II above of this petition.

WHEREFORE, Petitioner respectfully prays that the Public Utilities Commission of the State of California grant a rehearing of the above entitled matter, order that the effective date of the Order heretofore entered in this matter be extended for the period of the pendency of this petition for rehearing, and order the suspension of the operation of said Order until final determination is had of the Petition entitled *California Electric Power Company* v. *Federal Power Commission*.

Dated at Washington, D. C., this 19th day of July, 1951.

(SEAL)

THE UNITED STATES OF AMERICA
By /s/ PETER CORRADI
Civil Engineer Corps., USN
for Chief of the Bureau of Yards and Docks, Navy Department

ATTEST:
/s/ CHARLES GOODWIN
Counsel
/s/ GEORGE SPIEGEL
Assistant Counsel
Bureau of Yards and Docks
Washington 25, D. C.,
Attorneys for Petitioner

Duly sworn to by Peter Corradi. Jurat omitted in printing.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

(Title omitted)

Points and Authorities in Support of Petition for Review

As its points and authorities, the United States adopts the opinion of the Federal Power Commission (Opinion No. 212) *In the Matter of California Electric Power Co.*, holding that these sales by the Company to the United States was in interstate commerce and the regulation thereof was under the exclusive jurisdiction of the Federal Power Commission and not the Public Service Com-

mission of the State of California. A copy of this opinion is attached and by this reference is made a part hereof.

Respectfully submitted,

JAMES R. BROWNING
James R. Browning,
Acting Assistant Attorney General

(SEAL)

PAUL A. SWEENEY
Paul A. Sweeney,
MELVIN RICHTER
Melvin Richter,
Attorneys, Department of Justice
Attorneys for United States of America.

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Exhibit to Points and Authorities

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

OPINION No. 212

In the Matter of
California Electric Power Company } Docket No. E-6269

APPEARANCES

For Respondents
HENRY W. COIL

For Mineral County Power System
L. E. BLAISDELL, *District Attorney*

For Public Utilities Commission of the State of California
BORIS H. LAKUSTA

For the Navy Department
HAMILTON TREADWAY

For Staff of the Federal Power Commission
HOWARD E. WAHRENBROCK
FRANCIS L. HALL

37

Opinion

BY THE COMMISSION:

We initiated this proceeding by our show cause order issued on February 14, 1950, to determine, *inter alia*, whether California

Electric Power Company (Respondent) is in violation of Sections 20, 205 and 206 of the Federal Power Act (Act) and the rules thereunder (1) by increasing its interstate wholesale rate to Mineral County Power System, Mineral County, Nevada (Mineral County) without filing the change in rate as required by the Act and the rules; and (2) by failing to file with us the rate schedule applicable to its interstate wholesale rate to the U. S. Government, represented by the Chief of the Bureau of Yards and Docks, Navy Department (Navy) for supply of energy to the Naval Ammunition Depot at Hawthorne, Nevada.

Respondent is a licensee under Part I of the Act and it has heretofore on several occasions been found to be a public utility under Part II of the Act. However, inasmuch as Respondent asserts that its deliveries and sales to Mineral County and to Navy are not subject to Parts I and II of the Act, we deem it necessary to summarize the pertinent facts pertaining to such deliveries and sales.

Respondent owns and operates an interconnected system in the States of California and Nevada. With the exception of energy received from the Hoover Dam in Nevada, all the energy
38 sold and delivered by Respondent is generated in California.

For our purposes it is only necessary to discuss the operations of Respondent's so-called Northern Division since the energy purchased by Mineral County and the Navy, the only sales in issue in this proceeding, is supplied from that Division. During certain periods of the year all energy sold to Mineral County and Navy is received from the output of Respondent's three licensed projects Nos. 1388 (Poole), 1389 (Rush Creek) and 1390 (Mill Creek), all located in Mono County, California. When the output of these three plants is insufficient to supply the requirements of Mineral County, Navy and Respondent's other loads in Mono County, energy is received from Respondent's Control substation to the south located in Inyo County, California, which is tied into Respondent's Bishop Creek hydroelectric plants, known as Bishop Creek Nos. 2, 3, 4, 5, 6, all of which are licensed projects except No. 6, and from the unlicensed hydroelectric Owens River plants of the City of Los Angeles, known as the Adams Main and the Adams Auxiliary Plant. These Adams plants are tied into Respondent's 110-kv Northern Division transmission line which extends from Control substation to Lee Vining substation, to which the Poole plant (licensed project No. 1388) is also connected. At Lee Vining substation the voltage is reduced to 55-kv and transmitted over Respondent's 55-kv transmission line to its Mill Creek plant (licensed project No. 1390) where the energy sold to Mineral County and the Navy is delivered and metered at Re-
39 spondent's 55-kv switching station bus. During the year

1949, approximately 84.7% of the energy delivered to Mineral County and the Navy originated in Respondent's Rush Creek, Poole and Mill Creek plants. About 10.7% came from the two unlicensed plants of the City of Los Angeles and 4.6% was supplied from the Respondent's five Bishop Creek plants.

At the Mill Creek plant, the Navy owns the oil switch and bus disconnects, for both its and Mineral County's 55-kv transmission lines, together with the control equipment and the oil switch and relays. All other substation equipment, including the meters, is owned, operated and maintained by Respondent. Energy delivered at the Mill Creek substation is transmitted from that point into the State of Nevada for use, distribution and resale, over lines separately owned and operated by Mineral County and the Navy. The latter's 55-mile transmission line, constructed during World War II, is more reliable than the much older line owned and operated by Mineral County. Accordingly, at Hawthorne, switching facilities are available to interconnect Mineral County's system with that of the Navy, so that in emergencies the Mineral County's System can be, and at times it has been, supplied with energy either wheeled from Respondent's Mill Creek plant, via the Navy's line, or from the latter's three-diesel engine driven standby generating plants.

Respondent and its predecessors have been selling electric energy to Mineral County, a county-owned electric utility, since 1936. At the present time Respondent's sale to Mineral County is for Mineral County's requirements in Nevada (except some minor amount of energy supplied by Navy's standby plant during emergencies). The purchased energy, other than line losses and a small amount used in Mineral County's shop and office building, is resold and distributed by Mineral County in Mineral County, Nevada, where it serves the Town of Hawthorne, several small settlements, and a mine and mill load.

On December 5, 1945, Respondent filed with us a contract setting forth the rates and charges for the sale of the above-described electric energy to Mineral County as a rate schedule to supersede Respondent's Rate Schedule FPC No. 13, which had been on file with us since October 20, 1942. The rate schedule filed December 5, 1945, was designated as Respondent's Rate Schedule FPC No. 15, and at Respondent's request, the date of the contract, October 5, 1945, was specified as the effective date of the schedule by our order of February 12, 1946.

On October 15, 1947, Respondent applied to the Public Utilities Commission of California for authority to increase its rates to certain designated customers. On July 1, 1948, the California Commission, in its decision No. 41798 allowed Rate Schedule

41 P-3 covering "Resale Power" to become effective and authorized Respondent in accordance with the terms thereof to increase its rates and charges to the customers named in the application. The rates and charges to Mineral County, however, were not expressly included in the decision of the California Commission. Nevertheless Respondent, being aware that Rate Schedule FPC No. 15 was on file with us as the lawful schedule of rates and charges for the sale of electric energy to Mineral County, on July 30, 1948, notified Mineral County that the new rates authorized by the California Commission would be applied to Mineral County as of October 5, 1948.

On October 15, 1948, Respondent submitted to us for filing the proposed increased rate (Schedule P-3) to supersede the rates contained in its Rate Schedule FPC No. 15. By four letters dated October 7 and December 30, 1948, February 9 and March 18, 1949, we requested Respondent to complete its proposed new filing by submitting the additional data required by the rules, to support its proposed increase in rate. Faced by this necessity, Respondent on March 22, 1949, advised that it had "decided not to go ahead with these filings, and inasmuch as they have never qualified as formal filings, there is no necessity for a cancellation or withdrawal." Upon its request, the incomplete filings were returned to Respondent.

42 By letters dated June 8 and July 20, 1949, we asked Respondent for a reconciliation of its reported revenues from the sale of electric energy to Mineral County for the year 1948 with the rates and charges set forth in Rate Schedule FPC No. 15. By letter dated August 4, 1949, Respondent informed us that since August 1, 1948, service to Mineral County has been billed at a schedule of rates and charges different from those provided in Rate Schedule FPC No. 15. No rate schedule setting forth new rates has been filed with us by Respondent and Rate Schedule FPC No. 15 has never been cancelled in accordance with our rules. Instead, Respondent in August 1949, applied to the California Commission for a finding and declaration that Schedule P-3 is and has been applicable to the sale of electric energy to Mineral County since October 15, 1948, or, if not applicable to establish a rate for such service. Action by the California Commission on this application is now pending.

The record shows that the effect of the use of Rate Schedule P-3 instead of FPC No. 15 during the period from the month ending October 25, 1948, through the month ending February 25, 1950, has increased the amount Mineral County has had to pay by approximately 43% or $15,372.11.

Under an agreement dated July 1, 1943, Respondent supplies the Navy with the energy requirements at the Naval Ammunition

Depot, Hawthorne, Nevada, except such energy as may be generated by the Navy's standby plant (during 1949, Navy's three diesel generators produced 521,500 kwh, equal to 7.5% of the energy purchased by the Navy that year from Respondent). Part of the energy purchased by the Navy is resold by it to
43 domestic and commercial customers located on the U. S. Government Naval reservation. For the period of 1943 to 1948, inclusive, the percentage of energy resold by the Navy (of the total purchased and generated by Navy) ranged from 15.5% to 28.6%, the average being 18.7%. In 1949, approximately 24% of the 6,423,272 kwh purchased and generated by the Navy was resold to the business concessions and residents occupying the Navy's low-cost defense housing project (1,170 units located on the reservation). These customers are individually metered and billed monthly by the Navy in accordance with written contracts at 1.5¢ per kwh. The record shows that such sales have been made with Respondent's knowledge.

This contract which was never filed with us was purported to be terminated by the Respondent as of October 1, 1948. As of that date, Respondent billed the Navy at rates provided in Schedule P-2, "Power-Generated Wholesale Service" filed and published by Respondent with the California Commission pursuant to that Commission's decision No. 41798, referred to above. The Navy has denied the applicability of Schedule P-2 and has refused to pay the rates reflected therein on the grounds, *inter alia,* that Schedule P-2 was not made applicable to the sales of electric energy in Hawthorne, Nevada, by the California Commission and that such sales may not be subject to that Commission's jurisdiction but may be subject to jurisdiction of this Commission. In August 1949, Respondent applied to the California Commission for a finding and declaration that Schedule P-2 is and has
44 been applicable to the sales of electric energy to the Navy since October 1, 1948, or if not applicable to establish a rate for such service. Action by the California Commission on this application as in the case of Mineral County is pending.

This Commission and the California Commission, agreeing that the question of rate jurisdiction presents a situation calling for a concurrent hearing as contemplated by Section 1.37(e) of our rules, adopted orders setting concurrent hearings commencing March 20, 1950, in the hearing room of the California Commission, San Francisco, California.

The Public Service Commission of the State of Nevada, through its Chairman, appeared at the hearing but did not actively participate therein, stating that he was present as an interested party only "due to the fact that these proceedings are to decide whether

the Federal Power Commission or the California Commission has jurisdiction".

JURISDICTION

The facts in this case, former Commission decisions, and court opinions, fully establish that we have jurisdiction under Parts I and/or II of the Act to regulate the rates charged by the Respondent to Mineral County and the Navy. First we shall discuss our jurisdiction over these rates as provided by Part I of the Act.

45 *Jurisdiction under Part I of the Act.*

Under Section 20 of Part I the first prerequisite to our jurisdiction is that the energy must enter into interstate commerce. The facts clearly show that energy generated by Respondent at its licensed projects is transmitted from California to Nevada. The fact that the facilities for the transmission and sale of the energy by Respondent are all located in the State of California and that the facilities used to transmit the energy across the State line are owned by others than the Respondent in no way detracts from its interstate character. It has long been established that a person who transports a product on a portion of an interstate-through journey, even though his portion of the transportation occurs entirely within a state, is engaged in interstate commerce. *The Daniel Ball*, 10 Wall. 557, *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83.

Furthermore, the fact that the transmission facilities across the state line are owned and operated by parties who come within the purview of Section 201(f) of the Act in no way affects the entry of Respondent's energy in interstate commerce. *Arizona Edison Company and Central Arizona Light and Power Company*, Opinion No. 190, issued March 31, 1950.

The facts further reveal that both Mineral County and Navy purchase the power "for sale and distribution or use in public service" within the purview of Section 20, Mineral County
46 by virtue of its sales to retail customers in Nevada and the Navy by virtue of its sales to retail customers within the Naval Reservation. Our jurisdiction attaches to every wholesale rate in interstate commerce charged by a licensee, irrespective of who the purchaser may be, subject to one further consideration.

The other aspect of Section 20 which has been brought into issue in this proceeding is whether or not the States of California and Nevada, both of whom the record clearly shows are directly concerned, have provided regulatory commissions to enforce the pro-

visions of Section 20 within such states, and if so, whether such states have been unable to agree on the services to be rendered or on the rates or charges of payment therefor.

First, it should be noted that state authority over an interstate wholesale rate under Section 20 can be exercised only by two or more states jointly. No control over interstate rates and services is granted to a single state. *Safe Harbor Water Power Corp.* v. *Federal Power Commission*, 179 F. 2d 179, 187.

47 Whatever jurisdiction the Nevada Commission may have as to Mineral County's retail rates, it has been given no jurisdiction by Nevada statutes over Respondent's charges to Mineral County. Neither that Commission nor any other properly constituted authority, either under the general statute creating the Public Service Commission of Nevada or under the special statute relative to Mineral County power system, is authorized to regulate the wholesale charges by Mineral County "either within or without the State of Nevada". In other words, even though Mineral County is authorized to purchase energy for resale no regulation of such sales to it is provided by the State.[1]

49 In respect to the sales to the Navy it has not been shown that Nevada has any statutory authority to regulate the rate charged to the Navy by Respondent. In fact Respondent concedes that no such authority exists and accordingly no further discussion is deemed necessary.

The Court made it clear in *Safe Harbor Water Power Corp.* v. *Federal Power Commission* (124 F. 2d at 805-806) that to be a commission or other properly constituted authority of a state within the meaning of Section 20, the state must not only delegate rate regulatory power to an agency, but such agency must in fact exercise the delegated power.

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[1] It is to be noted that Sections 2 and 16 of the Act passed by the Nevada Legislature, as amended on March 5, 1925, authorizing Mineral County to purchase and operate the facilities now utilized by Mineral County, provide in pertinent part (Stat. of Nev. 1925, C. 48, p. 55):

> "Section 2. The board of county commissioners *** shall have authority to enter into any and all necessary contracts with any person, firm or corporation, *either within or without the State of Nevada*, for the purchase of electric energy and current ***.
>
> * * * *
>
> "Section 16. The maintenance and operation of said Mineral County power system shall be under the control, supervision and authority of the board of managers, and rates charged to consumers for sale and distribution of electrical energy and current, *** with the terms and conditions thereof, shall be fixed by said board, subject to the supervision of the Nevada public service commission, who may revise, raise or lower the same. ***"

It is apparent that the Public Service Commission of Nevada is without authority with respect to rates charged Mineral County or the Navy, and therefore cannot be regarded as a "commission or other authority to enforce the requirements of" Section 20, and it follows that no further showing is required to support the conclusion that it is impossible for a properly constituted authority of Nevada to agree with the California Commission concerning the rates charged Mineral County and the Navy.

One other contention advanced by Respondent in regard to our jurisdiction should be noted. This contention is that neither the deliveries to Mineral County nor those to the Navy are subject to our jurisdiction, unless it can be shown that Part II of the Act repealed Sections 19 and 20 of Part I. Inasmuch as Sec-
50 tion 19 applies solely to intrastate rates, it has no applicability in the matter before us, we therefore confine our remarks to Section 20. Heretofore we have considered the matter of repeal of Section 20 by Part II of the Act in detail and again we reaffirm our conclusion of this question *In the Matter of Safe Harbor Water Power Corporation*, 5 F.P.C. 231, 239-243. In this proceeding, as in the *Safe Harbor* case, we conclude that whether Section 20 may be given an interpretation avoiding conflict or (p. 242) "* * * whether the conflicting part of that section be deemed repealed by implication, the finding that the States are unable to agree is not a necessary condition precedent to our authority under that section for the rates here in question, being interstate wholesale rates held beyond the regulatory power of the States in the *Attleboro* case, the condition of section 20 would be inapplicable. Our jurisdiction, therefore, would not be dependent upon our finding that the States are unable to agree."

Jurisdiction Under Part II of the Act.

Now turning to Part II of the Act, Section 201(b) defines the coverage of Part II applicable to "public utilities", and the scope of the Commission's jurisdiction thereunder. It first provides that Part II "shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce." It then commits to the Commission jurisdiction over "all facilities for such transmission or sale," with certain exceptions inapplicable here. Section 201(c) provides that for the purpose of regulation by the Commission, "elec-
51 tric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof." "Sale * * * at wholesale" is defined in Section 201(d) as sale "to any person for resale."

It has been shown above that the Respondent transmits and sells electric energy at wholesale to Mineral County and to the Navy to

the extent of their requirements in the State of Nevada, except for such energy as may be generated by the Navy's standby plant. Transmission in California, to and including the point of metering at the Mill Creek substation, is effected over facilities of Respondent, such transmission at times covering distances ranging up to eighty miles (from Bishop Creek and City of Los Angeles plants). The energy so transmitted includes energy from both licensed and non-licensed plants. At the Mill Creek plant the facilities of the Respondent join with those of Mineral County and the Navy, thus permitting the energy to continue its uninterrupted journey to the state boundary and thence into the State of Nevada where it is reduced to distribution voltage and, except for the portion thereof devoted by the purchasers to their own use, is resold to ultimate consumers.

We are unable to agree with the contention that we should treat all of the energy sold to the Navy as being *used* by it and therefore not within the concept of "resale" within the meaning of that term as used in Section 201(d) of the Act, in face of the fact that approximately one-fourth of the total of such *use* consists
52 of resales. Section 201(d) defines a wholesale sale as a sale of energy for resale. As previously shown, the undisputed fact is that the energy is in part resold by Navy with Respondent's knowledge, at 1.5¢ per kwh to business concessions and residents occupying the Navy's housing project. There is nothing in the definition of a wholesale sale which makes it necessary that such a sale be under a contract referring to resale. Clearly, then, the sale by the Respondent to the Navy is a sale of electric energy, which is sold for resale, and therefore, a sale at wholesale in interstate commerce squarely within the coverage of the Act.

We have heretofore decided that a sale of electric energy by a municipality is not a municipal use of the energy within the contemplation of Section 10(e) exempting municipal licensees from annual charges "to the extent such power *** is used *** for municipal purposes." *The Central Nebraska Public Power and Irrigation Districts*, 5 F. R. C. 167, 171. Upon a full consideration of this issue, our decision was affirmed by the Court of Appeals for the Eighth Circuit (160 F. 2d 782, 786-787) and *certiorari* was denied by the Supreme Court (332 U. S. 765).

From the description of Respondent's operations, it is apparent that its interstate transmission and wholesale sales of electric energy to Mineral County and to the Navy come squarely within the coverage of Part II of the Act, one of the fundamental purposes of which is to provide for federal regulation in the "gap" revealed by the *Attleboro* decision (*Connecticut Light & Power*
53 *Co.* v. *Federal Power Commission*, 324 U. S. 515, 524; *Jersey Central Power & Light Co.* v. *Federal Power Commission*,

319 U. S. 61, 67-68; *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953, 964, *cert. den.*, 319 U. S. 741).

Respondent's contention that the Commission has no jurisdiction over the rates in question because the facilities used in making the sales to Mineral County and to the Navy are used in local distribution in the State of California, is without merit and has no basis whatsoever in the record. The record discloses that Respondent's facilities utilized in the sale to Mineral County and the Navy are facilities used for the transmission of electric energy in bulk for sale at wholesale. Similar contentions were advanced and found to be without merit by the Court in the case of *Federal Power Commission* v. *East Ohio Gas Co.* (338 U. S. 464, 469-473).

We cannot agree with the contentions of Respondent and counsel for the California Commission that the sales to Mineral County and the Navy are exempt from our jurisdiction because not within the purview of the Act under a literal application of the definitions in Parts I and II. This contention in regard to Mineral County is based upon the theory that the definition of "sale at wholesale" in Section 201(d) of the Act as a "sale to any person for resale" excludes sales to municipalities. We have consistently construed the Act as applicable to interstate wholesale sales to municipalities.

City of Los Angeles, v. *Nevada-California Electric Corp.*,
54 2 F. P. C. 104, 108-109; *In the Matter of Otter Tail Power Company*, 2 F. P. C. 134, 136-139; *In the Matter of Connecticut Light & Power Company*, 3 F. P. C. 132, 144; *In the Matter of Otter Tail Power Company*, Opinion No. 186, November 22, 1949.

The Act if construed literally, might exclude sales to municipalities, but the courts have held that where the plain meaning of words used in a statute produce an unreasonable result, clearly at variance with the policy of the legislation as a whole, the purpose of the statute rather than the literal words must be followed. *United States* v. *American Trucking Associations*, 310 U. S. 534, 543; *United States* v. *Rosenblum Truck Lines*, 315 U. S. 50, 55.

Exemption of sales to municipalities would produce an unreasonable result, for, as we stated in the *Otter Tail* matter (2 F. P. C. 134), it would mean that a utility may not discriminate in rates charged private persons or corporations, but is at complete and unfettered liberty to indulge in the rankest discrimination as between municipalities, or as between private customers and municipalities, receiving the same service. It is hardly likely that Congress intended to deprive consumers served by the thousands of municipally owned distribution systems, of protection from unjust and unreasonable interstate rates. Such result would be completely at variance with the basic purpose of the rate provisions of the Act which were designed to "fill the gap" in rate regulation left by the *Attleboro* case.

55 This analysis and interpretation of the Act equally apply to the sales to the Navy. Furthermore, the rate provisions of Sections 205 and 206 apply to every "public utility", which status depends solely upon the ownership and operation of prescribed facilities. The character of the reseller or its business is immaterial. The word "resale" is used in the Act without qualification. Thus Section 201(d) affords no exemption from our jurisdiction of the sales to Mineral County or the Navy.

Nor do the provisions of Section 201(f) afford an exemption to the Respondent from our jurisdiction over these sales. The Navy and Mineral County may themselves be exempt by the terms of Section 201(f) from "public utility" status under the Act, but the energy transmitted and sold at wholesale to them by Respondent is nevertheless energy "transmitted from a state and consumed at" points "outside thereof" within the literal language of Section 201(c). There is no basis whatever either in the wording, legislative history or purpose of the legislation to imply any exemption to Respondent. Thus it is clear that its sales to Mineral County and the Navy are not exempt by 201(f). The fact that these exempt agencies transmit the energy into Nevada is immaterial.

From a consideration of all matters herein we therefore find that Respondent's sales to Mineral County and the Navy are within the purview and subject to the provisions of Parts I and II of the Act.

56 IMPOSITION OF PENALTIES FOR VIOLATION NOT RECOMMENDED

The record shows Respondent to be in violation of the Act and the rules by its failure to file as a rate schedule its contract with the Navy and by collecting charges from Mineral County which were not on file as a rate schedule, however, we do not find that there are sufficient grounds to justify a finding that Respondent's conduct was "willful and knowingly" so as to warrant reference of the record to the Attorney General of the United States with a recommendation that criminal proceedings be instituted under Section 316 of the Act.

Appropriate findings and order will be entered in accordance with this opinion.

MON C. WALLGREN,
Chairman
THOMAS C. BUCHANAN,
Commissioner
CLAUDE L. DRAPER,
Commissioner
HARRINGTON WIMBERLY,
Commissioner

Dated at Washington, D. C.,
this 12th day of April, 1951.

LEON M. FUQUAY, *Secretary*

Date of Issuance: April 13, 1951

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57 In the Matter of
California Electric Power Company } Docket No. E-6269

SMITH, Commissioner, dissenting:

On this record, in my opinion, the Commission should affirm the Examiner's conclusion that the rates in question are not subject to its jurisdiction under the Federal Power Act.

NELSON LEE SMITH,
Commissioner

April 12, 1951

Date of Issuance: April 13, 1951

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58 UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Mon C. Wallgren, Chairman; Thomas C. Buchanan, Claude L. Draper, Nelson Lee Smith and Harrington Wimberly.

April 12, 1951

In the Matter of
California Electric Power Company } Docket No. E-6269

Order Directing Compliance With the Federal Power Act

Upon consideration of the record in the above-entitled proceeding and the arguments adduced ,and having this day issued its Opinion No. 212 in this matter, which hereby is incorporated by reference and made a part hereof.

The Commission further *finds*:

(1) Respondent, as holder of the licenses issued for the hydroelectric projects designated in the records of the Commission as projects Nos. 344 (San Gorgonia), 1388 (Poole), 1389 (Rush Creek), 1390 (Mill Creek) and 1394 (Bishop Creek), is a license under Part I of the Act.

(2) Respondent is also a "public utility" within the meaning of Part II of the Act (as this Commission has heretofore repeatedly found in the proceedings referred to in the recitals of the Order to Show Cause of February 14, 1950 in this proceeding), not only by virtue of its admitted ownership and operation of jurisdictional facilities not involved in this proceeding, but also because of its ownership and operation of facilities for the transmission and sale of electric energy at wholesale to Mineral County and to the Navy, as hereinafter more fully referred to.

(3) Respondent is engaged in the business of generating, transmitting, selling and distributing electric energy in public service in the States of California and Nevada. In addition to its other sales in California, Respondent supplies the electric requirements of Mineral County, Nevada, through sale of electric energy to Mineral County and to the Navy, such energy being delivered and metered by Respondent at its Mill Creek plant substation.

(4) On December 5, 1945, Respondent filed a contract setting forth rates and charges for the sale of electric energy to Mineral County as a rate schedule to supersede Respondent Rate Schedule FPC No. 13, covering the same transaction, which had been on file with the Commission since October 20, 1943. The rate schedule filed December 5, 1945, was designated by the Commission as Respondent Rate Schedule FPC No. 15, and upon application of Respondent the date of the contract (October 5, 1945) was specified as the effective date of the schedule, by Commission order entered February 12, 1946 (5 F. P. C. 362).

(5) No rate schedule setting forth new rates has been filed with the Commission by Respondent and Rate Schedule FPC No. 15 has never been cancelled in accordance with the Act and the rules. Under said schedule, Respondent is obligated to sell electric energy to Mineral County to the extent of the latter's requirements in Nevada. The purchased energy, other than line losses and a small amount used in Mineral County's shop and office building, is resold and distributed by Mineral County in Mineral County, Nevada, where it serves the Town of Hawthorne, several small settlements, and a mine and mill load.

(6) On July 1, 1943, Respondent entered into an agreement with the Navy for the supply of the Navy's electric energy requirements for use of the Naval Ammunition Depot, Hawthorne, Nevada, except such energy as may be gen-

erated by the Navy's standby plant, and thereafter supplied and billed the Navy for energy pursuant to the terms of that contract until October 1, 1948. Thereafter it continued to deliver energy in the same manner, but to bill the Navy at a higher rate, but the Navy continued to pay for the energy received at the rate provided for in the contract. Part of the energy so purchased by the Navy is resold by the Navy to domestic and commercial customers located on the Naval reservation. For the period from 1943 to 1948, inclusive, the percentage of energy resold by the Navy (to the total purchased from California Electric and generated by the Navy) ranged from 15.4% to 28.6%, the average being 18.7%. In 1949 approximately 24% of the 6,423,272 kwh purchased and generated by the Navy was resold to business concessions and to residents occupying the Navy's low-cost defense housing project located on the reservation. These customers were individually metered and billed monthly by the Navy, in accordance with written contracts, at 1.5 cents per kwh. Such resales have been made with Respondent's knowledge.

(7) To the extent that the output of the three licensed projects (Nos. 1388 (Poole), 1389 (Rush Creek) and 1390 (Mill Creek)) located in Mono County is insufficient to supply the electric requirements of Respondent's loads in Mono County and the Mineral County and Navy loads, such loads are supplied through the transmission in California, by Respondent, of energy over its own facilities, to the Mill Creek substation. The energy so transmitted to that substation is at times comprised solely of energy from licensed projects, at times solely of energy from nonlicensed sources, and at other times, the energy is comprised of a mixture of energy obtained from both licensed and nonlicensed sources. All of the energy so transmitted to the Mill Creek substation originates in the Company's Northern Division, which Division includes not only licensed Projects Nos. 1388 (Poole), 1389 (Rush Creek) and 1390 (Mill Creek) in Mono County, but also the plants and other energy sources, substations and transmission lines referred to in findings (8), (9), (10) and (11) below.

(8) Control Substation, located in Inyo County near Bishop, is the principal substation in that area owned and operated by Respondent. Short tie lines connect that substation with the Company's five Bishop Creek hydroelec-

tric plants. A short distance north of Control Substation, the Company's 100 kv Northern Division tie line is interconnected with the two unlicensed Adams hydroelectric plants of the City of Los Angeles.

61 (9) From Control Substation the 100 kv Northern Division tie line extends northward to the Rush Creek plant (Project No. 1389) in Mono County, thence to LeeVining substation, to which the Poole plant (Project No. 1388) is also connected. At LeeVining substation the voltage is reduced to 55 kv and transmitted over the Company's 55 kv line to the Mill Creek substation where the deliveries are made, without further reduction in voltage, to the Navy and Mineral County.

(10) Transmission facilities used by Respondent in making its deliveries and sales to Mineral County and to the Navy include the 55 kv line in Mono County from LeeVining substation to Mill Creek substation, and the 60-mile 100 kv Northern Division tie line from Control Substation.

(11) At the Company's Mill Creek substation, the Navy owns the oil switches and bus disconnects to both the Navy and Mineral County transmission lines, together with the control equipment for the oil switches and relays. All other substation equipment at Mill Creek, including the meters, is owned, operated and maintained by Respondent.

(12) By means of the facilities referred to in finding (11) above, the facilities of Respondent interconnect with those of Mineral County and the Navy at the Mill Creek substation. From that point of delivery separately owned and operated 55 kv lines of Mineral County and the Navy transmit the energy to the state boundary and thence into the State of Nevada where it is reduced to distribution voltage and, as indicated above, except for the portion thereof devoted by the purchasers to their own use, is resold to ultimate consumers and consumed in Nevada.

(13) The sale of electric energy by Respondent to Mineral County, above referred to, is a sale at wholesale in interstate commerce subject to the jurisdiction of this Commission under the provisions of Section 201(b) of the Act. The Sale to the Navy is a sale of electric energy, a substantial, non-identifiable and non-segregable part of which is sold for resale, and the sale to the Navy is, therefore, also a sale at wholesale in interstate commerce. The sales
62 to Mineral County and to the Navy are not exempt from

this Commission's jurisdiction by Section 201(f) of the Act. Each rate and charge made, demanded or received by Respondent for or in connection with each such sale is subject to the rate regulatory and filing provisions of Sections 205 and 206 of Part II of the Act and Part 35 of the Commission's rules.

(14) The electric power from Respondent's licensed projects sold to Mineral County and to the Navy is sold in and enters interstate commerce, within the meaning of Section 20, Part I of the Act.

(15) The "States directly concerned" within the meaning of Section 20 are the States of California and Nevada. The State of Nevada has not provided a regulatory commission or other authority to enforce the requirements of Section 20 with respect to such sales as those made by Respondent to Mineral County and to the Navy.

(16) Respondent's rates and charges for electric energy sold to Mineral County and to the Navy are subject to regulation in accordance with the provisions of Section 20.

(17) The facilities used by Respondent in making its wholesale sales of electric energy to Mineral County and to the Navy are not "used in local distribution" within the meaning of Section 201(b) of the Act.

(18) Since the effective date of Rate Schedule FPC No. 15, i.e., October 5, 1945, such schedule has been the lawful rate applicable to sales of electric energy by Respondent to Mineral County, and such schedule will continue to be the lawful rate for such service until superseded by a properly supported new filing or by Commission order.

(19) Since October 5, 1948, Respondent has charged and continues to charge Mineral County rates in excess of those provided in Rate Schedule FPC No. 15, and thereby has violated and threatens to continue violating the provisions of Sections 20 and 205(d) of the Act and Sections 35.3 and 35.20 of the Commission's rules thereunder.

63 (20) It is reasonable and appropriate for this Commission to order Respondent to cease and desist from charging Mineral County any rate other than those duly filed pursuant to Section 205 of the Act and the provisions of Part 35 of the Commission's rules.

(21) It is reasonable and appropriate for the purposes of the Federal Power Act to require Respondent to (a) account

for the difference between the amounts which were actually charged and paid for energy delivered to Mineral County and those which would have been properly charged in accordance with Rate Schedule FPC No. 15, (b) to set up out of surplus, in Account 258, Other Reserves, a special contingency reserve in the amount of that difference, and (c) to submit a plan for the disposition of that amount to those entitled thereto.

(22) By its failure to file its agreement of July 1, 1943, with the Navy, Respondent has violated and threatens to continue violating the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's rules.

(23) It is reasonable and appropriate that, in accordance with the Act and the rules thereunder, Respondent be required to file the rates and charges as set forth in the agreement of July 1, 1943, referred to in finding (22), above, as a rate schedule, such schedule to be effective until and unless superseded by a new filing or Commission order.

(24) It is reasonable and appropriate for this Commission to order Respondent to cease and desist from charging the Navy any rate other than that duly filed with this Commission.

(25) The ruling of the Hearing Examiner as set forth in line 10, page 112, to line 6, page 115, of the transcript of the hearing sustaining the objection of counsel for Respondent to the receipt in evidence of the Nevada Public Service Commission's letter of July 14, 1949, which appears in the transcript, was in error, and the letter was properly admissible.

(26) The ruling of the Hearing Examiner as set forth in line 13, page 115 to line 3, page 122 of the transcript, excluding testimony which appears as an offer of proof was properly admissible.

The Commission *orders*:

(A) California Electric Power Company cease and desist from charging Mineral County Power System any rates and 64 charges other than those reflected in filed Rate Schedule FPC No. 15, until and unless such schedule is duly superseded by a properly supported new filing or by a rate prescribed by Commission order.

(B) California Electric Power Company account for the difference between the amounts actually charged and paid

by the Mineral County Power System and those which would have been properly charged in accordance with Rate Schedule FPC No. 15; set up out of surplus, in Account 258, Other Reserves, a special contingency reserve in the amount of that difference; and submit a plan with respect to the disposition of that amount to those entitled thereto.

(C) California Electric Power Company file the rates and charges as set forth in its agreement introduced in evidence as Exhibit No. 1, dated July 1, 1943, with the United States of America, represented by the Chief of the Bureau of Yards and Docks, Navy Department, as a rate schedule for service to the Navy, such schedule to be effective until and unless schedule is duly superseded by a properly supported new filing or by a rate prescribed by Commission order.

(D) California Electric Power Company cease and desist from charging the Navy any rate other than that duly filed with the Commission.

(E) The ruling of the Hearing Examiner as set forth in line 10, page 112, to line 6, page 115, of the transcript of the hearing sustaining the objection of counsel for California Electric Power Company to the receipt in evidence of the Nevada Public Service Commission's letter of July 14, 1949, which appears in the transcript, be and the same is hereby reversed.

(F) The ruling of the Hearing Examiner as set forth in line 13, page 115 to line 3, page 122 of the transcript, excluding testimony which appears as an offer of proof, be and the same is hereby reversed.

By the Commission. Commissioner Smith dissenting.

LEON M. FUQUAY,
Secretary.

Date of Issuance: April 13, 1951

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70 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

(Title Omitted)

Answer to Petition for Writ of Review—Filed Oct. 8, 1951

The Public Utilities Commission herewith respectfully submits its answer to the two petitions for writ of review herein. Each

challenges the Commission's Decision No. 45913, issued July 3, 1951. (The decision is appended as Exhibit A to the petition for a writ filed by the United States.) While the grounds
71 alleged in the two petitions correspond only in part and while there are substantial factual differences relating to each petitioner which had to be given effect by the Commission in issuing its decision, the same basic argument dominates both petitions, viz., that the California Commission was without authority to render the decision it did, being precluded by the interstate commerce clause (Federal Const., Art. 1, Sec. 8) and the Federal Power Act (1935, c. 687, 49 Stat. 841, 16 U.S.C.A. Sec. 791, et seq.) This circumstance suggests the appropriateness of a single document in answer to both petitions. It appears that needless repetition can thereby be avoided and the pattern of the Commission's reasoning more clearly set forth. The Court's acceptance of a single answer is, therefore, respectfully sought.

Quite simply the decision under attack did two things: (1) it *authorized* California Electric Power Company to charge certain electric rates to the Navy Department for sales at Mill Creek, California, the energy to be transported by the Navy from Mill Creek to Nevada for use of the Naval Ammunition Depot at Hawthorne; (2) it *directed* California Electric Power Company to charge certain electric rates to Mineral County Power System (the operating name for the County of Mineral, Nevada, in its proprietary capacity as the seller of electric energy at retail) for sales at Mill Creek, California, the energy to be transported by
72 Mineral County Power System from Mill Creek to Nevada for resale to retail customers in that state. The reason for *authorizing* rather than directing the imposition of rates in the case of the Navy lay in the fact that, pursuant to Public Utilities Act, Section 17(b) (now Public Utilities Code, Section 532), the Commission had, in 1942, issued a general order (General Order No. 96), providing in Section X-B thereof that an electric utility could, if it saw fit, furnish service to the United States and its departments at "free or reduced rates." Mineral County, on the other hand, does not come within the terms of such General Order.

The Commission's decision, authorizing rates in the case of the Navy and directing rates in the case of Mineral County Power System, was the result of two applications filed with the Commission by California Electric Power Company seeking to have the Commission determine whether an earlier general rate increase decision (Decision No. 41798 of July 1, 1948) should be construed to apply to the two types of sales in question. During the pendency of such applications, and after the first day's hearing thereon, it became apparent that the jurisdiction of the California Commission to make rate orders respecting the sales referred to

hinged upon the proper interpretation of both the interstate commerce clause and the Federal Power Act. It was at that juncture
73 that the Federal Power Commission, having learned of the California Commission proceeding, decided to institute its own proceeding to inquire into the matter. In implementation thereof it issued an order to show cause against California Electric Power Company (FPC Docket No. 3-6269). By mutual agreement of the California and Federal commissions, a concurrent hearing was thereafter held in San Francisco. The effect of such procedure was to make the evidence adduced during the concurrent hearing equally a part of the record in each of the two proceedings. The Legal Department of the California Commission entered an appearance at such concurrent hearing and argued by subsequent briefs that jurisdiction over the rates in question lay solely in the California Commission.

While the Federal Commission proceeding was instituted later than the California Commission proceeding, the Federal Commission was the first to issue an opinion. (FPC Opinion No. 212, issued April 13, 1951). Such opinion, contrary to the Federal Examiner's proposals, asserted jurisdiction in the federal body, Commissioner Smith dissenting. A petition to have such Federal Commission order set aside was filed on June 21, 1951, by California Electric Power Company in the United States Court of Appeals for the Ninth Circuit. (U. S. Ct. of Apps., 9th Circuit, Docket No. 12987.) That review proceeding is now pending and
74 the California Commission will seek permission at the appropriate time to file an amicus curiae brief therein. On July 3, 1951, the California Commission issued its own decision, Decision No. 45913, holding that neither the interstate commerce clause nor the Federal Power Act precluded California Commission jurisdiction. It further held that its earlier general rate increase decision affecting California Electric Power Company (Decision No. 41798) should be construed to apply to the sales in question. Accordingly, it issued its order authorizing certain rates to be charged to the Navy and directing certain rates to the charged to Mineral County, as mentioned above. That is the decision here assailed by the United States (Navy Department) and Mineral County, Nevada.

It is conceded that petitioners have perfected their right to seek review here by exhausting the administrative remedy. Both filed petitions for rehearing which were denied. Public Utilities Act, Section 67 (now Public Utilities Code, Section 1756; Stats. 1951, ch. 764). It is further conceded that they are entitled to urge the several grounds presented by them to this Court because such grounds were urged in their respective petitions for rehearing.

Public Utilities Act, Section 66 (now Public Utilities Code, Section 1732, Stats. 1951, ch. 764).

The grounds for review urged before this Court by the
75 United States (Navy Department) are as follows:

1. It was error for the California Commission to hold that the sales to the Navy are not in interstate commerce.

2. It was error for the California Commission to hold that the sales to the Navy even if held to be in interstate commerce are subject to the California Commission's jurisdiction.

3. It was error to issue a decision in square conflict with the Federal Power Commission's order in a proceeding in which the Legal Department of the Public Utilities Commission participated as a party and in which review proceedings are pending before the Court of Appeals for the Ninth Circuit.

4. It was error to construe the Commission's earlier general rate increase decision (Decision No. 41798 of July 1, 1948) as covering the sales by California Electric Power Company to the Navy and as authorizing the application of the company's Schedule P-2.

Mineral County urges the following grounds for review:

1. The California Commission acted in excess of its powers and jurisdiction.

2. It was error to issue a decision in square conflict with the Federal Power Commission's opinion.

3. The California Commission did not take cognizance of a certain provision in the Nevada laws.

4. The California Commission misconstrued Section 201(f) of the Federal Power Act.

An examination of the several grounds listed reveals one manifest misstatement on the part of each petitioner. The United States, in alleging in its Ground No. 1 that the California Commission erred in construing the sales to the Navy as not in interstate commerce, accuses the California Commission of a posi-
76 tion it has not taken. Nowhere in the decision does the California Commission express an opinion that the sales in question are or are not in interstate commerce. Mineral County in its Ground No. 4 accuses the Commission of relying upon Section 201(f) of the Federal Power Act to exempt the sales in question. Nowhere in the decision does the California Commission rely upon such section or so much as mention it.

It follows that Ground No. 1 in the United States petition and Ground No. 4 in Mineral County's petition may be excluded from consideration. The remaining grounds will be dealt with in the argument which follows. It will be noted, as previously mentioned, that both petitioners challenge the jurisdiction of the California Commission to make the order it did. Furthermore, both petitioners allege that it was error for the California Commission to issue a decision in conflict with an opinion of the Federal Power Commission. The United States makes an additional contention, not shared in by Mineral County, to the effect that the California Commission misconstrued its own earlier rate decision. On the other hand, Mineral County makes an additional contention, not shared in by the United States, to the effect that the California Commission did not take full cognizance of certain provisions in the Nevada law.

We are convinced that the several contentions of the petitioners are without merit. It will be the purpose of the following argument to present to this Court the cogent reasons dictating such conclusion.

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Argument.

I. *Sales to the Navy. The California Public Utilities Commission Is Not Precluded from Exercising Jurisdiction Over the Rates Charged by California Electric Power Company for Sales of Energy to the Navy, Either Under the Interstate Commerce Clause or the Federal Power Act.*

A. *Facts.*

California Electric Power Company began selling electric energy to the Navy at Mill Creek, California, in 1943 pursuant to a contract for the sale of all energy required by the government "for use of the Government's Naval Ammunition Depot, Hawthorne, Nevada." The energy is delivered to the Navy by the Company at the latter's Mill Creek generating plant. The Navy transmits such energy over a Navy-owned transmission line extending from the Mill Creek plant to the Naval Ammunition Depot at Hawthorne, Nevada. Thus, part of the transmission line is in California and part in Nevada. A large percentage of the energy furnished to the Navy is derived from hydroelectric plants operated by the Company pursuant to license as provided in Part I of the Federal Power Act. The balance is derived by the Company from non-licensed sources in California. While over a long range period the greater part of the energy furnished to the Navy comes from licensed projects, there are moments when all or a portion of its comes from the non-licensed sources. The energy purchased by the Navy is consumed wholly at the Naval

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Ammunition Depot at Hawthorne, Nevada, which, in addition to the installations devoted directly to Naval use, includes the quarters for Naval personnel described as "public quarters" and the "Navy Low-Cost Housing Project" known as Babbitt, which provides living quarters and facilities for those civilians connected directly or indirectly with the Navy's activities on the reservation. The Navy makes a charge for electric energy furnished to those individuals residing in the "public quarters" or occupying premises for living or business purposes at Babbitt. Those who occupy living space in the "public quarters" and in Babbitt are tenants of the Navy and their lease agreements provide that the rental privilege ceases upon termination of employment by the Navy. Those who conduct business concessions at Babbitt are also tenants of the Navy and they occupy premises pursuant to a "Revocable Permit" reciting that the concession is "for accommodation of employees of the Depot." The electric energy furnished these tenants in the "public quarters" and at Babbitt comes mainly from the supply purchased by the Navy at Mill
79 Creek though, on occasion, it comes from the Navy's own stand-by plants on the reservation.

It is believed the foregoing facts are not in dispute. It will be noted that they immediately raise certain basic problems:

1. Since the energy crosses a state line, is the sale by California Electric to the Navy in interstate commerce? If so, does the interstate commerce clause of the Federal Constitution preclude state jurisdiction, in the absence of federal statute? This latter question is of significance because it is arguable that, even if the sales be conceded to be in interstate commerce, the Federal Power Act does not apply to that part of the energy derived from non-licensed sources. Part I of that Act sets forth provisions applicable to "licensees" licensed under such Part, and it is arguable that California Electric is a "licensee" within the meaning of Part I only to the extent that it sells power from licensed projects. Part II of the Act, while possibly applying to electric sales regardless of whether the energy comes from licensed or non-licensed sources, regulates only sales for resale in interstate commerce, and we contend that Part II does not apply because the sales to the Navy are not for resale.

2. To what extent does the Federal Power Act apply? Since California Electric is a "licensee" under Part I, does that Part govern all sales by the Company, whether the energy is
80 derived from licensed or non-licensed sources? If the sales in question be construed to be sales for resale in interstate commerce, does Part II apply and, if so, should the language there-

in be construed to permit state jurisdiction? It will be the purpose of the discussion below to demonstrate that neither Part I nor Part II of the Federal Power Act presents any barrier to the exercise of jurisdiction over the sales to the Navy as undertaken by the California Commission. Such conclusion is reached whether it be assumed that Parts I and II of the Federal Power Act both apply or that only Part I or Part II applies. In this connection, the attention of the Court is respectfully referred to the following decisions which shed some light upon the complexity of the problem:

Safe Harbor Water Power Corp. v. *FPC* (CCA, 3d, 1941), 124 F.2d 800, cert. dnd. (1942), 316 U.S. 663, 86 L.ed. 1748.

Safe Harbor Water Power Corp. v. *FPC* (CA, 3d, 1949), 179 F.2d 179, cert. dnd. (1950), 339 U.S. 957, 94 L.ed. 1368.

Consideration of the interstate commerce clause and the Federal Power Act follows:

B. *The Interstate Commerce Clause Does Not Preclude Jurisdiction by the California Public Utilities Commission.*

Upon the facts as stated, the interstate commerce clause does not, we submit, preclude jurisdiction by the California Public Utilities Commisison over the rates charged by California
81 Electric Power Company to the Navy. In *Public Utilities Commission* v. *Attleboro Steam and Electric Co.* (1927), 273 U.S. 83, 71 L.ed. 549, P.U.R. 1927B 348, it was held in a case where no federal statute delineating state and federal jurisdiction was involved,[1] that a state cannot regulate the rates charged by a local electric utility for current sold to a foreign electric utility for resale in another state and delivered at the state boundary, inasmuch as the interstate business carried on between the two utilities is essentially national in character, and state regulation would constitute a direct burden upon interstate commerce, placing a direct restraint upon that which, in the absence of federal regulation, should be free. Even if it be assumed that the sales by California Electric Power Company to the Navy are in interstate commerce, regulation of the rates for such sales by the State of California is not precluded under the *Attleboro* case. That deci-

[1] The Federal Water Power Act (1920, c. 285, 41 Stat. 1063, later incorporated as Part I of the Federal Power Act, 16 U.S.C.A., Sec. 792, et seq.) was in effect at the time of the *Attleboro* decision but was not applicable because the electric power in question was not derived from projects licensed by the federal government.

sion was based upon the proposition that the interstate commerce clause forbids state jurisdiction where a potential clash of state interests would arise from its exercise. Here, there can be no potential clash of state interests. Only one state, viz., California, is directly concerned, since Nevada has no jurisdiction over
82 the Navy, either as to the rates the Navy pays to California Electric or as to the rates the Navy charges its tenants. California's right to exercise jurisdiction arises only because it may regulate the rates of the seller California Electric, a California public utility. The purchaser of the energy, the Navy, is exempt from state jurisdiction. It is a department of the federal government; furthermore, it is not a public utility.

Another circumstance in support of the proposition that the interstate commerce clause does not preclude California jurisdiction is that the electric rates authorized by the California Commission are not rates which California Electric *must* charge the Navy. As stated heretofore, the Company is free, pursuant to Section 17 of the Public Utilities Act, as implemented by the Commission's General Order No. 96, to furnish electric service "at free or reduced rates" to a department of the United States Government.

The foregoing considerations make fairly plain that the California Commission's rate decision respecting sales to the Navy is not vulnerable as imposing an undue burden upon interstate commerce in violation of the Federal Constitution.

C. *The Federal Power Act Does Not Preclude Jurisdiction by the California Public Utilities Commission.*

As indicated previously, this conclusion is reached whether
83 it be assumed that both Part I of the Federal Power Act (setting forth the provisions applicable where power from licensed projects is involved) and Part II (applying "to the sale of electric energy at wholesale in interstate commerce but . . . not . . . to any other sale") apply, or that either Part I or Part II applies.

1. *The Effect of Part I of the Federal Power Act.*

Turning first to Part I (derived from the Federal Water Power Act (1920, ch. 285, 41 Stat. 1063)), if it be assumed that the sales to the Navy are in interstate commerce, the applicable language is found in Section 20 providing, in so far as pertinent, that when:

> "said power or any part thereof [presumably any power furnished by a licensee] shall enter into interstate or foreign commerce the rates . . . and the services . . . by any . . . licensee . . . or by any person, corporation, or association pur-

chasing power from such licensee for sale and distribution or use in public service shall be reasonable . . . to the customer . . . ; and whenever any of the states directly concerned has not provided a commission or other authority to enforce the requirements of this section within such state . . . or such states are unable to agree through their properly constituted authorities on the services . . . or . . . rates . . . jurisdiction is hereby conferred upon the [Federal] Commission . . . to regulate . . . so much of the services . . . and . . . rates . . . there for as constitute interstate or foreign commerce . . . "

It will be observed that Congress has conferred jurisdiction
84 on the Federal Power Commission under Section 20 only if any of the states directly concerned has not provided a commission or other authority to enforce the requirements of Section 20 within such state ("requirements" apparently referring to the provision that the rates and services by licensees or persons purchasing from licensees for resale in public service shall be reasonable), and, furthermore, even though the requisite state commissions or other authorities have been provided, only if the states directly concerned are unable to agree on the service or rates through their properly constituted authorities.

Assuming that the language of Section 20 applies at all, it is clear, we submit, that under it, the sales to the Navy are excluded from Federal Power Commission jurisdiction. The California Commission is the kind of state "commission or other authority" contemplated by Section 20, for it has comprehensive power to regulate electric utility rates and service "within such state," viz., California. It has already been pointed out, in considering the interstate commerce clause, that California is the only state which can, because of its authority over California Electric, affect the sales to the Navy. Nevada cannot order the Navy to pay a certain rate for electricity purchased, nor can it order the Navy to charge a certain rate for electricity distributed. It follows that, since only one state is "directly concerned," no question can arise
85 of inability as between two states directly concerned to agree on the reasonableness of the rates charged to the Navy. Thus, Federal Power Commission jurisdiction is excluded because the two conditions to its exercise, as prescribed by Congress in Section 20, are absent.

2. *The Effect of Part II of the Federal Power Act.*

Part II of the Federal Power Act (enacted as part of the Public Utility Act of 1935, ch. 687, 49 Stat. 803) declares in Section 201 (b) that:

"The provisions of this Part shall apply . . . to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy . . . "

In addition to this jurisdictional language, it is provided in the policy declaration of Section 201(a) that federal regulation of the "sale of such [electric] energy at wholesale in interstate commerce is necessary in the public interest, such federal regulation, however, to extend only to those matters which are not subject to regulation by the states."

Putting aside the question whether the sales are in interstate commerce, it is clear that the sales to the Navy do not fall within the language "sale of electric energy at wholesale," which is defined by Section 201(d) to mean "a sale of electric energy to any person for resale." The sales in question are neither sales to a "person" nor are they sales "for resale."

86 The word "person" is defined by Section 3(4) of the Act to mean "an individual or corporation." A "corporation" by Section 3(3) means:

"any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include 'municipalities' . . . "

It is obvious that the Navy is not a "person" as defined.

Not only is the Navy not a "person" but the sales to it cannot properly be described as "sales for resale." Reference has already been made to the contract entered into in 1943 whereby California Electric agreed to supply "all electric energy required by the Government . . . for use of the Government's Ammunition Depot . . . " The evidence showed that the use in fact made of the energy furnished is consistent with such language. All of the energy is consumed on the Naval reservation; part is used in the Depot's industrial operations or dissipated in system losses; the balance is used by the individuals and business establishments located on the government reservation. Individuals may reside or conduct business only so long as their presence is consistent with the Navy's obligations. The lease agreements with those occupying "public quarters" and with those occupying the low-cost housing project known as Babbitt, both provide that the rental privilege

87 ceases upon termination of employment. For the business concessions, the government issues a "Revocable Permit" reciting that the concession is "for accommodation of employees of the Depot."

It follows that the sales to the Navy are in effect for its sole use and not "for resale." It is true that, in supplying electricity to those living or conducting business at the reservation, the Navy is in a sense "reselling" energy purchased from California Electric Power Company, but it is clear that the term "sale for resale" in Part II of the Federal Power Act was intended by Congress to refer to a different situation. The courts have repeatedly pointed out that Part II was enacted to close the gap in utility regulation revealed by the *Attleboro* decision. See *Jersey Central Power & Light Co.* v. *FPC* (1943), 319 U. S. 61, 87 L. ed. 1253, 63 S. Ct. 953. The Navy is certainly not a public utility. Even assuming that it would not be precluded from that status by virtue of its position in the federal government, it could not be deemed a public utility by virtue of furnishing electricity to tenants whose continued tenancy depends upon the needs of the Navy landlord.

Quite aside from the conclusion thus reached, that the sales to the Navy are not to a "person for resale" under Part II of the Federal Power Act, jurisdiction is denied the Federal Power Commission by the proviso clauses of Sections 201(a) and 201(b) of Part II. Section 201(a) declares that federal regulation shall

"extend only to those matters which are not subject to regu-
88 lation by the States" and Section 201(b), in making Part II applicable to "sales at wholesale in interstate commerce," contains the proviso that Part II "shall not apply to any other sale of electric energy." Taking these sections together and construing them in the light of their statutory history, it is plain that Congress intended the Federal Power Commission to have jurisdiction only in that area where the United States Supreme Court had declared state regulation over sales could not be exercised because of the interstate commerce clause. See *Connecticut Light and Power Co.* v. *FPC* (1945), 324 U. S. 515, 89 L. ed. 1150, 65 S. Ct. 749. In the case presented here, it has already been pointed out that the interstate commerce clause does not apply to prevent state jurisdiction, and it has further been pointed out that the machinery set up by Congress in Section 20 of Part I to enable states upon certain conditions to exercise jurisdiction without burdening interstate commerce is available upon the facts shown and makes it possible for California to regulate the sales to the Navy. Thus, both under the Constitution and Part I of the Federal Power Act, California may exercise jurisdiction. Therefore, the provisos of Sections 201(a) and 201(b) in Part II operate to deny Federal Power Commission jurisdiction under Part II. It follows that

there is nothing in Part II to prevent the exercise of Cali-
89 fornia jurisdiction over the sales in question.

II. *Sales to Mineral County Power System. The California Public Utilities Commission May Properly Exercise Judisdiction Over the Rates Charged by California Electric Power Company for Sales of Energy to Mineral County Power System. The Right to Exercise Such Jurisdiction Is Assured by the Terms of the Federal Power Act.*

A. *Facts.*

As previously noted, California Electric sells electric energy to Mineral County Power System at Mill Creek, California, and the latter transmits the energy over its own line to Nevada, reselling to local consumers in Nevada. As in the case of the Navy, the evidence indicates that, while a large percentage of the energy is derived from licensed projects, there are times when all or a portion of it comes from non-licensed sources.

B. *The Right of the California Public Utilities Commission to Exercise Jurisdiction Is Assured by the Terms of the Federal Power Act.*

Upon such facts, it is submitted that the right of the California Public Utilities Commission to exercise jurisdiction, even if the sales by California Electric be considered to be in interstate commerce, is effectively provided by the terms of the Federal Power Act. It is true that, unlike the situation with respect to sales to the Navy, regulation by California of the sales to Mineral County Power System might well, standing alone, be regarded as imposing an undue burden upon interstate commerce, for the State
90 of Nevada clearly has an interest in the cost of electricity to Mineral County Power System and the rates in turn charged by it to its customers. It is in this precise kind of situation, however, that the Federal Power Act, through the machinery set up in Part I, Section 20, makes possible the exercise of state jurisdiction under certain conditions where such exercise would not impose an undue burden on interstate commerce by jeopardizing the interests of a sister state.

It is submitted that Part II of the Federal Power Act does not apply because the sales to Mineral County Power System are not to a "person" as defined. Even if Part II were construed to apply, however, the proviso clauses previously alluded to, in Sections 201(a) and 201(b) of Part II, operate to preserve the exercise of jurisdiction recognized in Part I.

Detailed consideration of the effect of Parts I and II of the Federal Power Act upon the exercise of California Commission jurisdiction over the sales to Mineral County Power System follows:

1. *The Effect of Part I of the Federal Power Act.*

By the terms of Part I, Section 20, two conditions must be present before states directly concerned may exercise jurisdiction: (1) such states must have commissions with authority to enforce the requirements of Section 20 within the state; (2) such states must not be unable to agree upon the rates to be charged. In the case of the sales to Mineral County Power System, (1) each
91 of the states directly concerned, viz., California and Nevada, *has* provided "a commission or other authority to enforce the requirements of this section within such state," and (2) such states *have not*, through their properly constituted authorities, been shown unable to agree on the rates for the sales in question.

Considering more specifically the first of these two conditions provided in Section 20, it cannot be seriously contended that the California Commission, entrusted as it is with very broad regulatory authority over the rates and service of utilities within the state, fails to qualify as "a commission or other authority to enforce the requirements of this section within such state." While the Nevada Public Service Commission does not exercise as great a degree of control over Mineral County Power System as it does over private organizations engaged in public service in Nevada, it nevertheless has express jurisdiction over Mineral County Power System's rates. Nevada Statutes of 1925 provide at page 55:

> "Sec. 16. The maintenance and operation of said Mineral County Power System shall be under the control, supervision and authority of the board of managers, and rates charged to consumers for sale and distribution of electric energy and current, and the tolls from telephone service, with the terms and conditions thereof, shall be fixed by said board, *subject to the supervision of the Nevada Public Service Commission, who*
> 92 *may revise, raise or lower the same.*" (Emphasis added.)

The quotation makes clear that the Nevada Public Service Commission is, with respect to Mineral County Power System's rates, "a commission or other authority to enforce the requirements of this section within such state."

The petitioners contend that, in order to qualify as "a commission or other authority to enforce the requirements of this section within such state," a commission must have authority not only to regulate the rates charged by a utility but the rates such utility pays for power purchased ouside the state and transmitted in interstate commerce. It is claimed that the Nevada Commission does not qualify because it is not empowered to fix the rates Mineral County Power System pays to California Electric Power Company. Such contention has no merit. Surely, Congress did not

contemplate state commissions with powers beyond those normally entrusted to them, powers which might indeed be found to be unconstitutional.

Turning to the second condition in Section 20, viz., that the states must not be unable to agree, there was no evidence whatever to indicate that California and Nevada "through their properly constituted authorities" were "unable to agree." No evidence whatever was offered respecting any course of dealing, or an absence thereof, between the California and Nevada commissions, or between any other authorities of the respective states. The
93 Chairman of the Nevada Public Service Commission stated at the concurrent hearing that his Commission had determined not to participate in the cooperative procedure and that he would appear only as an interested party. He further stated:

> "The State of Nevada, therefore, is not interested except to the extent that the users are living in Nevada and, therefore, I will say that we are very much interested. I am not prepared to state at this time what the position of our Commission would be, until after this matter of jurisdiction has been decided. That is all the statement I wish to make."

These words make apparent that there was no inability to agree, and that the Nevada Commission has adopted a neutral position.

It follows that, since neither of the circumstances prevailed upon which Federal Power Commission jurisdiction is conditioned under Section 20, jurisdiction could properly be exercised by the California Commission over the sales to Mineral County Power System.

See First and Second *Safe Harbor* cases, supra.

2. *The Effect of Part II of the Federal Power Act.*

It was observed in discussing the sales to the Navy that Part II gives the Federal Power Commission jurisdiction only over sales . . . "to any person for resale." The sales to Mineral County
94 Power System undoubtedly are "for resale" but they are not sales to a "person." Section 3(4) defines a "person" as "an individual or corporation." A "corporation" by Section 3(3) "shall not include 'municipalities' as herein defined." A "municipality" by Section 3(7) means "a city, county, irrigation district, drainage district, or other political subdivision or agency of a state competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power . . ." Mineral County Power System, as we understand it, is the operating name for the County of Mineral in its proprietary capacity as the seller of electric energy at retail. Thus, it is a

"municipality" as defined in Section 3(7) and, therefore, is excluded from the definition of a "corporation" in Section 3(3) and from the definition of a "person" in Section 3(4). It follows that Part II does not apply to the sales to Mineral County Power System.

Even if the sales to Mineral County Power System were to be regarded to be within the purview of Part II, the proviso clauses of Sections 201(a) and 201(b) apply. The views heretofore stated respecting them apply with equal force. Since by the provisions of Part I, Section 20, the California Commission upon the facts may exercise jurisdiction, the proviso clauses in Part II operate to ensure that jurisdiction by denying it to the Federal Power Commission.

95 We have developed at some length the reasoning underlying the California Commission's conclusion that it had jurisdiction to regulate the rates for the sales to the Navy and Mineral County Power System. We turn now to the second contention made by both petitioners, viz., that it was error to issue a decision in square conflict with the Federal Power Commission's opinion.

III. *The California Public Utilities Commission Was Not Precluded from Rendering a Decision Based Upon Its Own Interpretation of the Federal Constitution and a Federal Statute Merely Because a Federal Power Commission Decision Taking a Contrary Position Was Currently Before a Federal Court of Appeals on Petition for Review.*

Petitioners do no more than make the flat assertion that it was error for the California Commission to issue a decision in conflict with a Federal Power Commission decision currently under review. No reason is assigned for such position and no authorities are cited.

If petitioners means to indicate that, where the construction of the Federal Constitution or a federal statute is in issue, a state tribunal must defer to a federal tribunal whenever a proceeding has been begun in the latter, they forget that the laws of the United States are as binding on citizens and courts as state laws.

96 State tribunals have equal jurisdiction with federal tribunals to construe federal law and determine whether that law confers concurrent jurisdiction or exclusive jurisdiction upon one or the other of such tribunals. *Gerry of California* v. *Superior Court* (1948), 32 Cal. 2d 119. In *Grubb* v. *Public Utilities Commission of Ohio* (1930), 281 U. S. 470, 74 L. ed. 972, the United States Supreme Court said:

> "The appellant relies on the commerce clause as in some way operating to commit to the federal courts and to withhold from the state courts jurisdiction of all suits relating to the regulation or attempted regulation of interstate commerce. This view of that clause is quite inadmissible. It has no support in any quarter, is at variance with the actual practice in this class of litigation . . . and is in conflict with the doctrine often sustained by this court that the states have concurrent jurisdiction of suits of a civil nature arising under the Constitution and laws of the United States, save in exceptional instances where the jurisdiction has been restricted by Congress to the federal courts."

The prior institution of proceedings in a federal tribunal does not preclude the state tribunal from construing federal law to determine whether or not that law confers jurisdiction.

Grubb v. *Public Utilities Commission of Ohio* (1930); supra.
Minneapolis & St. L. R. R. v. *Bombolis* (1916), 241 U. S. 211, 60 L. ed. 961.
Robb v. *Connolly* (1884), 111 U. S. 624, 28 L. ed. 542.

97 The state court may not decline to exercise jurisdiction merely because it would be inconvenient or confusing to handle a case involving rights under a federal statute.

Gerry of California v. *Superior Court*, supra.
Mondou v. *New York, New Haven & Hartford R. R.* (1912), 223 U. S. 1, 56 L. ed. 327.

In the *Gerry of California* case, *this Court said* (32 Cal. 2d 119 at 122):

> "Inasmuch as the laws of the United States are as binding on citizens and courts as state laws, state courts competent to exercise it have concurrent jurisdiction with the federal courts to enforce federal law unless expressly or by necessary implication withheld by federal statute, and the existence of jurisdiction creates the duty to exercise it."

The state and federal tribunals may proceed until a final judgment of one becomes conclusive on the other as *res adjudicata*.

Grubb v. *Public Utilities Commission*, supra.

In short, petitioners' contention is without merit.

IV *The California Commission Was Fully Warranted in Concluding That Its Earlier Rate Decision, Decision No. 41798, Should Be Construed to Apply to the Sales by California Electric Power Company to the Navy.*

The United States contends that it was error for the California Commission to construe its earlier Decision No. 41798 as applying to the sales to the Navy. Such contention to be meritorious
98 would have to be based upon the premise that there was no evidence in the record in the earlier proceeding and no statement in the earlier decision itself which could reasonably form the basis for concluding that the sales to the Navy were intended to be covered in the rate order. Quite aside from the fact that the Commission is in the best position to know what it intended in issuing the earlier rate order, there was clearly ample evidence in the earlier proceeding to justify a rate order extending to the sales to the Navy, and, furthermore, the language of that earlier decision is reasonably susceptible of the interpretation given it. The Court's attention is respectfully invited to the discussion of this matter beginning at the bottom of sheet 3 of Decision No. 45913 (the decision here under attack).

V. *The Charge That the California Commission Did Not Give Full Recognition or Effect to the Nevada Statutes Is Unwarranted.*

Mineral County in its petition for a writ incorporates by reference its petition for rehearing, on page 2 of which it is contended that the California Commission did not give effect to the following language in the Nevada statutes:

> "Section 2. The board of county commissioners . . . shall have authority to enter into any and all necessary contracts with any person, firm or corporation, either within or without the State of Nevada, for the purchase of electric energy or current . . ."

99 Mineral County contends that such language excludes the Nevada Public Service Commission from exercising jurisdiction over Mineral County Power System notwithstanding the language in Section 16, page 55 of Nevada Statutes of 1925 giving that Commission jurisdiction over the rates charged by the Power System. (See quotation from Nevada Statutes, page 22 above.) We are at a loss to follow the thread of petitioner's reasoning. It appears to be a *non sequitur*.

CONCLUSION

It is respectfully submitted that neither the United States nor Mineral County, Nevada, has shown cause for the issuance of a writ herein. Their petitions should, therefore, be denied.

It is submitted that this Court should, for the reasons previously given, act upon the petitions herein without awaiting disposition of the proceeding before the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

s/ EVERETT C. McKEAGE
s/ BORIS H. LAKUSTA
s/ WILSON E. ~~CAINE~~

Attorneys for the Public Utilities Commission of the State of California

Dated: San Francisco, California,
October 8, 1951.

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100 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

(Title Omitted)

STATE OF CALIFORNIA
City and County of San Francisco } ss.

GRACE E. HUNT, being first duly sworn, deposes and says:

That affiant is, and at all times herein mentioned was, a citizen of the United States over the age of twenty-one
101 years, and neither a party to nor interested in the above proceeding.

That on the 8th day of October, 1951, in the City and County of San Francisco, affiant personally deposited in the United States Mail copies of the within ANSWER TO PETITIONS FOR WRIT OF REVIEW, addressed to the following attorneys:

James R. Browning, Esq.
Acting Asst. Attorney General,
Department of Justice,
Washington 25, D. C.

L. E. Blaisdell, Esq.
County District Attorney,
Hawthorne, Nevada.

Henry W. Coil, Esq.
c/o California Electric Power Co.,
Riverside, California.

That said copies were enclosed in sealed envelopes and all postage thereon fully prepaid. That attorneys for the Public Utilities Commission have their offices in the City and County of San Francisco. That there is a regular communication by mail between the City and County of San Francisco, California, and Washington, D. C., Hawthorne, Nevada, and Riverside, California, respectively.

s/ GRACE E. HUNT

Subscribed and sworn to before me this 8th day of October 1951.

s/ R. J. PAJALICK
Secretary, Public Utilities Commission of the State of California

SEAL

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103 SUPREME COURT OF THE STATE OF CALIFORNIA

(Title Omitted)

Answer of California Electric Power Company to Petition for Writ of Review—Filed Oct. 8, 1951

California Electric Power Company, a corporation, Respondent above named, for answer to the Petition for Writ of Review, states:

I

Admits that this Respondent did supply electric energy to the United States, Navy Department, Bureau of Yards and Docks under a contract, dated July 1, 1943, and avers that said contract between this Respondent and the United States provided in part as follows:

"That from and after the first day of July, 1943, until the end of the fiscal year 1944, and thereafter until sixty (60) days' written notice to the contrary is given by either party to the other, the Company agrees to furnish to the Government, and the Government agrees to purchase from the Company, all electric energy required by the Government delivered at the Company's Mill Creek (Jordan) Power Plant,
104 located near Lundy Lake, Mono County, California, for use of the Government's Naval Ammunition Depot, Hawthorne, Nevada, except such electric energy as may be generated by the Government on such premises." * * *

II

This Respondent avers that said contract provided only for the sale of energy by Respondent to the United States "for use of the

Government's Naval Ammunition Depot, Hawthorne, Nevada," and that this Respondent did not therein or otherwise or at any time undertake or agree to sell or deliver energy to the United States for resale; denies that all or any part of such energy so purchased by the United States is or has been resold by it as alleged in the Petition, or otherwise, within the intent and meaning of Federal Power Act; avers that all such energy is used by the United States for said Naval Ammunition Depot, and that, if a substantial part or any part of the energy so purchased by the United States or its Navy Department is resold, the same has been in derogation of said contract and unauthorized by Respondent; that it is the practice and policy of Respondent to charge a higher rate for energy to be resold by a purchaser than for energy to be consumed by a purchaser; that if Petitioner, after purchasing energy from Respondent under Schedule P-2, which quotes rates for industrial power to be consumed by the purchaser, thereafter resold any thereof, the same constituted deception and an unjustified abuse of respondent's published rate schedules; and that said Petition does not allege that Respondent sold any electric energy to the United States "for resale."

105

III

Respondent avers that it not only attempted to terminate said contract, but did terminate the same as of October 1, 1948, by 60 days' written notice to the Petitioner in accordance with the mutual termination privileges set forth in said contract; that Respondent did bill the Petitioner in accordance with Schedule P-2 fixed by Public Utilities Commission of California; and that the Petitioner refused and still refuses to pay the excess thereof above the rates named in said terminated contract.

IV

Respondent denies that Public Utilities Commission of California erred in any of the respects set forth in paragraph XI of the Petition herein, including Exhibit B, attached thereto, or otherwise or at all in any of the proceedings mentioned in the Petition herein.

V

This Respondent denies that the Legal Department of Public Utilities Commission of California intervened in the Federal Power Commission's proceedings mentioned in paragraph VIII of the Petition herein, and denies that said Legal Department became a party thereto, but avers that said Legal Department entered its appearance in the concurrent hearing before Federal Power Commission and Public Utilities Commission of California examined witnesses and filed a brief and an application for rehearing therein.

VI

Respondent avers that, if the allegation in paragraph IV of the Petition herein, to the effect that a substantial part of the electric energy purchased by the United States is resold to domestic
106 and commercial customers be construed as alleging that such energy is sold by Respondent to the United States for resale within the meaning of Sec. 201 (b) and (d) of Federal Power Act, then, the allegations of paragraph IX of the Petition herein show that the Order issued April 13, 1950 by Federal Power Commission was and is unlawful in that it directed Respondent to sell energy to the United States for resale under said contract which provided for sale of energy only "for use of the Government's Ammunition Depot, Hawthorne, Nevada." Respondent avers that said Order was unlawful for the further reason that said contract had long since been terminated in accordance with its terms.

VII

This Respondent avers that, as alleged in paragraph II of the Petition herein and as found by Federal Power Commission in said Order of April 13, 1951, this Respondent is a licensee under Part I of Federal Power Act (Secs. 1-29; 16 U.S. Code Secs. 791-823) and holds licenses for five projects consisting of seven hydro-electric power plants located in Mono and Inyo Counties, California, all of which Respondent owns and operates as a public service corporation and in developing, transmitting, and distributing power for sale and use in public service, and that part of the electric energy generated in each and all of said projects is sold and delivered to the United States at Respondent's Mill Creek Plant in Mono County, California, for use of the Government's Naval Ammunition Depot, Hawthorne, Nevada, and is transmitted by the United States from said Mill Creek plant to said Naval Ammunition Depot in Nevada solely over and by means of a transmission line owned, maintained and operated by the United States between said points.

107 VIII

Section 19 of Federal Power Act (16 U.S. Code Sec. 812) provides in effect that, as a condition of all such licenses, every licensee which is a public service corporation or corporation owning or operating any such project and developing, transmitting or distributing power for sale or use in public service shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power and of rates and charges of payment therefor as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the

rate charged. That in case such State has not authorized or empowered a commission or other agency to regulate such services and rates, jurisdiction is conferred upon Federal Power Commission to exercise such regulation until such state shall have provided such Commission or authority for such regulation, and that such jurisdiction of Federal Power Commission shall cease and determine as soon as such state shall have provided such commission.

IX

The provisions of said Section 19 are expressly incorporated in each of this Respondent's said licenses and is a contractual arrangement between the United States and Petitioner founded upon an adequate consideration and is immune from impairment under Amendment V to the Constitution of the United States and Sections 13 and 14 of Article I of the Constitution of California.

X

The State of California has and, at all times herein mentioned, had authorized and empowered a commission (Public Utilities Commission, Respondent herein) within said State to regulate
108 services and rates of this Respondent as provided in said Section 19 of Federal Power Act, and said Commission has, at all times herein mentioned, regulated this Respondent's services and rates in accordance with the Public Utilities Act of said State (Deering's G. L. Act 6386).

XI

Section 20 of said Federal Power Act (16 U.S. Code Sec. 813) provides in effect that, when said power or any part thereof shall enter into interstate commerce, the rates charged and the service rendered by such licensee shall be reasonable, non-discriminatory and just, and that whenever any of the states directly concerned has not provided a commission or other authority to enforce the requirements of this Section within such State, or such States are unable to agree through their properly constituted authorities, jurisdiction is conferred upon Federal Power Commission to enforce the provisions of this Section and to regulate so much of services and rates as constitute interstate commerce.

XII

Section 6 of said Federal Power Act (16 U. S. Code Sec. 799) operates so as to incorporate the provisions of said Section 20 of said Act as a contractual provision of all of this Respondent's said licenses, which is based upon an adequate consideration and is immune from impairment under Amendment V to the Constitu-

tion of the United States and Sections 13 and 14 of Article I of the Constitution of California.

XIII

The States of California and Nevada are the only States which are directly concerned in the matters referred to in the
109 Petition herein or in said Section 20 and each of said States has provided a Commission to enforce the provisions of said Section 20 within such states. (Deering's G. L. Act 6386; Nev. Comp. L. 1929, Secs. 6100 et seq.), and there is no allegation in said Petition that said States are unable to agree as provided in said Section 20 of Federal Power Act.

XIV

The rates of this Respondent referred to in the Petition herein are not subject to regulation by Federal Power Commission under Part II of Federal Power Act (Secs. 201-209; 16 U.S. Code Secs. 824-824h) for the following reasons:

(a) The rate regulatory features of Part II of Federal Power Act (Secs. 201, 205 and 206; 16 U.S. Code Secs. 824, 824d and 824e) do not apply to licensees under Part I of said Act for the reason that regulation thereof is vested in State Commission or Commissions under Sections 19 and 20 of said Act as contractual stipulations between the United States and the licensees, including this Respondent.

(b) Under Sec. 201 of Federal Power Act (16 U.S. Code Sec. 824) Federal Power Commission has jurisdiction only over rates for the transmission of electric energy in interstate commerce and for the sale of energy at wholesale (for resale) in interstate commerce; and neither the rates nor sales mentioned in the Petition herein are for either of such purposes.

(c) Such sales are not sales in interstate commerce, for the reason that under Sec. 201(f) of said Act, none of the provisions of Part II of said Act apply to the United States or any
110 agency, authority or instrumentality thereof and, hence, the definition of interstate commerce in Sec. 201(c) of said Act does not apply to the United States and neither the United States nor its Navy Department is or can be engaged in interstate commerce under Part II of said Act;

(d) Such sales to the United States are not sales at wholesale as defined in Sec. 201(b) and (d) of said Act, for the reason that they are not made to a "person," as defined in Sec. 3(3), (4) and (7) of said Act.

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Federal Power Commission had no authority to order this Respondent to reinstate the terminated contract of July 1, 1943, between this Respondent and the United States, (a) because said contract had been cancelled in accordance with its terms a year and a half before said order of Federal Power Commission was issued on April 13, 1951; and (b) because said contract provided solely for the sale of electric energy for consumption by the United States, that is, "for use of the Government's Ammunition Depot, Hawthorne, Nevada" and Section 201 of Federal Power Act denies jurisdiction in Federal Power Commission over rates for energy sold either in intrastate or interstate commerce for consumption by the purchaser; and (c) because the United States is simply and only a distribution customer on Respondent's 55 kv system used in the distribution of electric energy in Mono County, California, which transaction is excluded from the jurisdiction of Federal Power Commission by Sec. 201(a) of said Act.

111 Wherefore, this Respondent prays that the Petition herein be dismissed.

s/ HENRY W. COIL
s/ H. M. HAMMACK
s/ DONALD J. CARMAN
s/ KENNETH M. LEMMON
Attorneys for Respondent, California Electric Power Company

112 *Duly sworn to by G. C. Delvaille. Jurat omitted in printing.*

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113 STATE OF CALIFORNIA, }
COUNTY OF RIVERSIDE, } ss

RUTH WARREN, being first duly sworn, on oath deposes and says: that she is a citizen of the United States, a resident of the City of Riverside, County of Riverside, State of California, over the age of twenty-one years, and not a party to the within named cause; that affiant's business address is 3771 Eighth Street in said City of Riverside; that on the 28th day of September, 1951, affiant deposited in the United States mail in said City of Riverside, true copies of the within Answer, enclosed in sealed envelopes with all postage thereon fully prepaid, addressed, respectively as follows:

James R. Browning
Acting Assistant Attorney General
Washington, D. C.

Paul A. Sweeney, Attorney
Department of Justice
Washington, D. C.

Public Utilities Commission of California
State Building
San Francisco 2 California

L. E. Blaisdell
District Attorney
County of Mineral
Hawthorne, Nevada

That there is a regular communication by mail between said place of mailing and said places so addressed.

RUTH WARREN

Subscribed and sworn to before me this 28th day of September, 1951.

DEAN. STEVENSON
Notary Public in and for Riverside County, State of California

(SEAL)

My Commission Expires August 3, 1953.

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114 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

(Title Omitted)
(File Endorsement Omitted)

Reply of the United States to Answer of the Public Utilities Commission of the State of California—Filed Oct. 25, 1951

At this preliminary stage of these proceedings before this Court, the United States of America does not deem it necessary or proper further to discuss the various contentions advanced by the Public Utilities Commission in support of its order, review of which is here sought, asserting jurisdiction over the sales of electric energy by California Electric Power Company to the Naval Ammunition Depot at Hawthorne, Nevada. Several of these contentions are already answered by the Points and Authorities filed by the United States in support of its petition for review. Additional discussion will be contained in the brief which will be filed on behalf of the United States when the petition for review is granted. At this point, we understand the issue before the Court is whether to grant the petition for review, and we believe that the admitted complexity of the issues involved plus the fact that the decision
115 of the Public Utilities Commission is in square conflict with that of the Federal Power Commission on the same issues

of construction of the Federal Power Act (16 U.S.C. 792 *et seq.*) plainly indicate the desirability of the granting of the petition for review.

The sole portion of the Answer of the Public Utilities Commission to which we intend to reply—and by so limiting our reply, we do not concede the soundness of any of the Commission's contentions—is the Commission's suggestion that this Court act upon the petitions herein without awaiting disposition of the proceeding to review the Federal Power Commission's order, now pending in the Court of Appeals for the Ninth Circuit. In this connection, it may be well to point out that the Public Utilities Commission has misconstrued our assignment of error No. 3. In making this assignment, we did not intend to question the jurisdiction of this Court to review the Public Utilities Commission's order, or to urge either because the issues involved relate to the construction of a federal statute or because the petition for review was filed first in the Court of Appeals for the Ninth Circuit, that this Court must defer to the Ninth Circuit. On the contrary, our assignment, as is plain on its face, is directed solely to the action of the Public Utilities Commission. It attacks the propriety of the Public Utilities Commission's action in entering an order in direct conflict with that of the Federal Power Commission, issued in a proceeding to which the Public Utilities Commission, as a party, filed briefs and moved for rehearing under the limited rehearing provisions of Section 313(a) of the Federal Power Act (16 U.S.C. 8251(a)). Thus, we believe that since the Public Utilities Commission was a party to proceeding before the Federal Power Commission,
116 it was bound under the doctrine of *res judicata* by the decision of the Federal Power Commission entered in that proceeding and consequently that it was precluded from rendering a decision in conflict with that of the Federal Power Commission. See, *e.g.*, *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 402-404; *United States* v. *Willard Tablet Co.*, 141 F. 2d 141 (C.A. 7).

In light of these considerations and the further fact that the Public Utilities Commission has indicated that it expects to seek permission to file a brief *amicus curiae* in the Ninth Circuit's proceeding (Answer, p. 5), we urge this Court (a) to decline to accede to the suggestion of the Public Utilities Commission to act upon the petitions herein without awaiting disposition of the proceeding before the Court of Appeals for the Ninth Circuit and (b) to withhold action on the petition for review until the proceeding before the Court of Appeals for the Ninth Circuit has been finally disposed of. Such a course would appear to be in the interests of the efficient administration of justice, both because the views of all those interested in the issues here involved would be presented to the Ninth Circuit and because it would operate

to conserve the time of this Court, as well as the time, efforts and expense involved in preparing two sets of briefs and records.

Respectfully submitted,

s/ HOLMES BALDRIDGE,
Assistant Attorney General.

s/ PAUL A. SWEENEY,
s/ MELVIN RICHTER,
Attorneys,
Department of Justice.

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AFFIDAVIT OF SERVICE

ANGELINE AGAGLIATI, being first duly sworn, deposes and says: That she is, and at all times herein mentioned was, a citizen of the United States over the age of twenty-one years, and neither a party to nor interested in the above proceeding.

That on the 23d day of October, 1951, in the City of Washington, D. C., she personally deposited in the United States Mail copies of the within REPLY OF THE UNITED STATES TO ANSWER OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, addressed to the following attorneys:

Everett C. McKeage, Esquire
c/o Public Utilities Commission of the State of California,
San Francisco 2, California.

Henry W. Coil, Esquire
c/o California Electric Power Company,
Riverside, California.

That said copies were enclosed in sealed envelopes and all postage thereon fully prepaid. That the attorneys for the United States have their offices in Washington, D. C. That there is a regular communication by mail between Washington, D. C. and San Francisco and Riverside, California, respectively.

s/ ANGELINE AGAGLIATI

Sworn and subscribed to before me this 23rd day of October, 1951.

s/ MADELINE MACDONALD
Notary Public, D. C.

(SEAL)

My Commission Expires January 14, 1956.

118 S.F. No. 18463

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

(Title Omitted)

Order Denying Writ of Review—Filed Jan. 21, 1952

Petition for writ of review DENIED.

Gibson, C. J., Carter, J. and Spence J. voting for issuance of a writ.

(File Endorsement Omitted)

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119 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

(File Endorsement Omitted)

(Title Omitted)

Petition for Rehearing of Denial of Petition for Writ of Review—Filed Feb. 5, 1952

The United States of America, by Assistant Attorney General Holmes Baldridge, acting under the direction of the Attorney General, respectfully petitions this Honorable Court for rehearing of the Court's denial of the petition for writ of review in the above-captioned case.

In the order, which is the subject matter of the instant proceeding, the Public Utilities Commission has, we believe, erroneously construed the Federal Power Act (16 U.S.C. 792 *et seq.*) to
120 vest jurisdiction in it (to the exclusion of the Federal Power Commission) over the sales of electric energy by the Company to the Naval Ammunition Depot in Hawthorne, Nevada. The Public Utilities Commission has accordingly undertaken to exercise jurisdiction over these sales and has authorized the Company to charge therefor rates different from (and higher than) those contained in the contract of July 1, 1943 between the Company and the Navy.

In square conflict with the Public Utilities Commission's order, the Federal Power Commission, in its order of April 13, 1951, review of which is now pending in the Court of Appeals for the Ninth Circuit on the petition of the Company, has held that the Federal Power Act vests jurisdiction in it (rather than the Public Utilities Commission) over the rates for these sales by the Company to the Navy and has directed the Company to file with it the July 1, 1943 contract between the Company and the Navy as the rate schedule for these sales. We anticipate that this case will be heard by the Ninth Circuit in the late Spring of this year.

If the Ninth Circuit affirms the Federal Power Commission's order, this Court's refusal to review the decision of the Public Utilities Commission, which at the best is of doubtful validity, will place the United States as well as the Company in a dilemma as to which of the two commissions has jurisdiction in the premises, and efforts to comply with the order of one of the commissions may give rise to possible violations of the order of the other commission with concomitant liabilities, at least as far as the
121 Company is concerned, for fines and penalties. Moreover, additional litigation may be necessary finally to determine which of the two commissions has jurisdiction particularly in connection with the liability of the Navy under its letter of June 29, 1949 indicating its intent to pay, if it is unable to obtain an agreement from the Company for a different rate, the rate fixed or approved by "the regulatory body having jurisdiction in the premises." This need for relitigating this issue as to jurisdiction may be obviated by this Court, if it grants a Writ of Review in this case or if it withholds decision on this Petition for Rehearing until the Court of Appeals for the Ninth Circuit decides the issues in the case now pending before it.

WHEREFORE, the United States prays this Honorable Court to grant this petition for rehearing, to grant the petition for a Writ of Review and to determine the question of jurisdiction of the Public Utilities Commission on the briefs and oral arguments of the parties. Alternatively, the United States prays that action on this petition for rehearing be withheld until the Court of Appeals for the Ninth Circuit has issued its opinion in *California Electric Power Company* v. *Federal Power Commission*, No. 12987, now pending before that Court.

DATED this first day of February, 1952.

/s/ HOLMES BALDRIDGE,
Assistant Attorney General.

/s/ PAUL A. SWEENEY,
/s/ MELVIN RICHTER,
Attorneys, Department of Justice.

122 AFFIDAVIT OF SERVICE

ANGELINE AGAGLIATI, being first duly sworn, deposes and says: That she is, and at all times herein mentioned was, a citizen of the United States over the age of twenty-one years, and neither a party to nor interested in the above proceeding.

That on the 1st day of February, 1952, in the City of Washington, D. C., she personally deposited in the United States Mail copies

of the within PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF REVIEW, addressed to the following attorneys:

Everett C. McKeage, Esquire
c/o Public Utilities Commission of the State of California,
San Francisco, 2, California.

Henry W. Coil, Esquire
c/o California Electric Power Company,
Riverside, California.

That said copies were enclosed in sealed envelopes and all postage thereon fully prepaid. That the attorneys for the United States have their offices in Washington, D. C. That there is a regular communication by mail between Washington, D. C. and San Francisco and Riverside, California, respectively.

s/ ANGELINE AGAGLIATI

Sworn and subscribed to before me this 1st day of February, 1952.

s/ GLADYS E. McGAFFEY
Notary Public, D. C.

(SEAL)

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125 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

(Title Omitted)

Answer of California Public Utilities Commisson to Petition for Rehearing of Denial of Petition for Writ of Review.

Filed Feb. 8, 1952

This Court on January 21, 1952, denied petitions for writ of review sought by the United States and Mineral County, Nevada, herein.

126 The two petitioners have now served and filed in this Court petitions for rehearing, seeking that writs of review as originally prayed be granted and that the issues be determined "on the briefs and oral arguments," or in the alternative that "action on this petition for rehearing be withheld until the Court of Appeals for the Ninth Circuit has issued its opinion . . ."

Neither petitioner presents any sound reason for the relief prayed, nor any new matter. Each points to the decision of the California Public Utilities Commission as being in conflict with that of the Federal Power Commission and suggests that the utility California Electric Power Company may be faced with penalties or fines because of inability to obey conflicting orders. No argument is made on the merits.

It is submitted that the petitions for rehearing reveal a misunderstanding of the law in a number of respects.

A. *Effect of Denial of Writ of Review.*

In seeking a determination of the issues "on the briefs and oral arguments" and in suggesting that such course will obviate the "need for relitigating the issue as to jurisdiction," the petitioners evince ignorance of the effect of this Court's denial of a writ of review. Such denial constitutes an affirmance of the Commission's decision on the merits. As this Court stated in *Southern California Edison Co.* v. *Railroad Commission* (1936), 6 Cal. 2d 737, at 748:

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> "... it should be observed that under the State Constitution and the Public Utilities Act, the powers of this court in a proceeding to review an order or decision of the commission are not limited to the considerations incident to the writ of *certiorari* or review mentioned and provided for in section 4 of article VI of the Constitution and sections 1067-1077 of the Code of Civil Procedure."

Again, on page 756, this Court said:

> "... The denial of the petition for a writ of review in each case must be deemed a determination of the point..."

In *Napa Valley Electric Co.* v. *Railroad Commission* (1920), 251 U.S. 366, 64 L. ed. 310, the United States Supreme Court said, in referring to the effect of a denial by the California Supreme Court of a writ to review an order of the Commission (251 U.S. at 373):

> "... absence of an opinion by the supreme court did not affect the quality of its decision or detract from its efficacy as a judgment upon the questions presented..."

To like effect is *Southern Pacific Co.* v. *Van Hoosear* (1934), 72 F. 2d 903.

B. *Concurrent Jurisdiction of California Supreme Court.*

While petitioners do not expressly say so, they create the implication that this Court should be subservient to the determination of a federal administrative agency and should await the outcome of a federal court review of such determination. As shown in our Answer to the Petitions for Writs of Review herein (pp. 26-28), state tribunals have equal jurisdiction with federal tribunals to construe federal law and determine whether

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that law allows concurrent jurisdiction in the state and federal tribunals, or whether it gives exclusive jurisdiction in the federal tribunal. To repeat the language of this Court in *Gerry of California* v. *Superior Court* (1948), 32 Cal. 2d 119, 122:

> "... Inasmuch as the laws of the United States are as binding on citizens and courts as state laws, state courts competent to exercise it have concurrent jurisdiction with the federal courts to enforce federal law unless expressly or by necessary implication withheld by federal statute, and the existence of jurisdiction creates the duty to exercise it."

The prior institution of proceedings in a federal tribunal does not preclude the state tribunal from construing federal law to determine whether or not that law permits state jurisdiction.

> See *Grubb* v. *Public Utilities Commission* (1930), 281 U.S. 470, 74 L. ed. 972.

Indeed, in that case it was held that the decision of the state court, once final because of expiration of the period for appeal to the United States Supreme Court, estopped the appellant from further litigation in the federal court.

129 C. *Effect of Delay in Acting upon Petition for Rehearing.*

As an alternative to the issuance of a writ of review, petitioners ask that action on the petition for rehearing be withheld until the Court of Appeals for the Ninth Circuit has issued its opinion in the cognate proceeding. Apparently, petitioners are unfamiliar with this Court's Rule 27(e) which provides:

> "If no order [on petition for rehearing] is made before the decision becomes final, the petition shall be deemed denied."

Petitioners could hardly have intended to make the alternative request.

D. *Effect of California Supreme Court Decision upon California Electric Power Company.*

The United States argues that the petition for rehearing should be granted because the utility will otherwise be caught between conflicting orders, with the possibility of incurring fines and penalties. There are two answers. First, it is hardly befitting the United States to appropriate an argument which belongs to the utility only. Secondly, the record in the proceeding before the Court of Appeals Ninth Circuit (No. 12987), reveals that a stay order was

issued by that Court on August 29, 1951. The argument of the United States indicates that its counsel have not bothered to ascertain the state of the record.

CONCLUSION

In view of the foregoing, it is submitted that the petitions for rehearing should be denied.

Respectfully submitted,

EVERETT C. McKEAGE
BORIS H. LAKUSTA
WILSON E. CLINE
Attorneys for the Public Utilities Commission of the State of California

Dated: San Francisco, California, February 8, 1952.

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131 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. No. 18463

THE UNITED STATES OF AMERICA, *Petitioner*,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, THE CALIFORNIA ELECTRIC POWER COMPANY, a corporation, *Respondents.*

S.F. No. 18464

THE COUNTY OF MINERAL, STATE OF NEVADA, a political subdivision of the State of Nevada, *Petitioner*,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, and THE CALIFORNIA ELECTRIC POWER COMPANY, a corporation, *Respondent.*

STATE OF CALIFORNIA
City and County of San Francisco } ss.

GRACE E. HUNT, being first duly sworn, deposes and says:

That affiant is, and at all times herein mentioned was, a citizen of the United States over the age of twenty-one years, and
132 neither a party to nor interested in the above proceedings.

That on the 8th day of February, 1952, in the City and County of San Francisco, affiant personally deposited in the United States Mail copies of the within ANSWER TO PETITION FOR REHEAR-

ING OF DENIAL OF PETITION FOR WRIT OF REVIEW addressed to the following attorneys:

Holmes Baldridge, Esq.
Asst. Attorney General,
Department of Justice,
Washington 25, D,C.

L. E. Blaisdell, Esq.
County District Attorney,
Hawthorne, Nevada.

Henry W. Coil, Esq.
c/o California Electric Power Company,
Riverside, California.

That said copies were enclosed in sealed envelopes and all postage thereon fully prepaid. That attorneys for the Public Utilities Commission have their offices in the City and County of San Francisco. That there is a regular communication by mail between the City and County of San Francisco, California, and Washington, D.C., Hawthorne, Nevada, and Riverside, California, respectively.

S/ GRACE E. HUNT

Subscribed and sworn to before me this 8th day of February, 1952.

S/ R. J. PAJALICK
Secretary, Public Utilities Commission of the State of California.

(SEAL)

S.F. No. 18463

133 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

(Title Omitted)

Order Denying Rehearing—Filed Feb. 18, 1952

.....petition for rehearing DENIED.

Gibson, C. J., Carter, J. and Spence, J. voting for a rehearing.

GIBSON
Chief Justice

(File Endorsement Omitted)

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134 Clerk's certificate to foregoing transcript omitted in printing.

(Title Omitted)

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner,
IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 17, 1952.

WM. O. Douglas
Associate Justice of the Supreme Court of the United States.

Dated this 17th day of April, 1952.

☆ U.S. GOVERNMENT PRINTING OFFICE 1952 — 216371/P O 115

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 205

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA AND THE CALIFORNIA ELECTRIC POWER COMPANY

ORDER ALLOWING CERTIORARI FILED OCTOBER 13, 1952.

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

238206—52

[fol. 5] Commission in said matter against your Petitioner be annulled, vacated and set aside.

3. That in the meantime said Public Utilities Commission and Respondents be required to desist from further proceedings in said matter to be reviewed, and that said Commission be required to refrain from any further action therein.

4. That your Petitioner recover its costs herein; and for such further and additional relief as may be proper and just in the premises.

Dated: This 28th day of August, 1951.

(S.) L. E. Blaisdell, Walter Rowson, Attorneys for Petitioner.

Of Counsel: Walter Rowson, Reno, Nevada. (Admitted in California.)

[fol. 5½] *Duly sworn to by Ddvid L. Hermansen. Jurat omitted in printing.*

[fol. 6] POINTS AND AUTHORITIES

Federal Power Commission Opinion No. 212 and cases cited therein. The said opinion, as Petitioner is informed, will be an exhibit in the Petition for Review to be filed by the United States Government, reference to which is made. Counsel for Petitioner cannot, in the time remaining, append the same hereto and begs this Honorable Court's indulgence for the omission at this time.

Respectfully submitted, (S.) L. E. Blaisdell, Attorney for Petitioner.

[fol. 7] EXHIBIT A TO PETITION

Decision No. 45913

Before the Public Utilities Commission of the State of California.

Application No. 28791, 1st and 2nd Supplemental

APPLICATION OF CALIFORNIA ELECTRIC POWER COMPANY FOR AN INCREASE IN RATES

Henry W. Coil, for applicant, California Electric Power Company; L. E. Blaisdell, Esquire, Mineral County District Attorney, and Ex-Officio Attorney for the Mineral County Power System, for the Mineral County Power System; Oliver Rands, Hamilton Treadway, and F. E. Denniston, for the United States Navy; Boris H. Lakusta, for the Commission's staff.

APPLICATION FOR REHEARING

L. E. Blaisdell, District Attorney and Ex-Officio, Attorney for the Mineral County Power System.

[fol. 8] Decision No. 45913

Before the Public Utilities Commission of the State of California.

Application No. 28791, 1st and 2nd Supplemental

APPLICATION OF CALIFORNIA ELECTRIC POWER COMPANY FOR AN INCREASE IN RATES

Henry W. Coil, for applicant, California Electric Power Company; *L. E. Blaisdell, Esquire*, Mineral County District Attorney, and Ex-Officio Attorney for the Mineral County Power System, for the Mineral County Power System; *Oliver Rands, Hamilton Treadway*, and *F. W. Denniston*, for the United States Navy; *Boris H. Lakusta*, for the Commission's staff.

Application for Rehearing

To the Public Utilities Commission, of the State of California:

The Mineral County Power System, by its Attorney, L. E. Blaisdell, Esquire, Mineral County District Attorney, and by Nevada Statutes ex-officio attorney for the Mineral County Power System, hereby applies for rehearing in the above entitled matter with respect to the Opinion, Findings and Order issued July 3rd, 1951, on the following grounds:

First

That a final order of the Federal Power Commission, being opinion No. 212, Docket No. E-6269, issued April 13, 1951, is in full force and effect, reference to which is made, holding that jurisdiction rests with the Federal Power Commission, in the matter under consideration, and denying Jurisdiction in the Public Utilities Commission of the State of California (hereinafter called Commission.) That [fol. 9] the California Electric Power Company has filed a petition, dated June 20, 1951, with the United States Court of Appeals for the Ninth Circuit for review of the Federal Power Commission's Opinion and Orders. That the Commission of the State of California, in the order set out in its said Opinion, is virtually directing the California Electric Power Company to act in disregard of the Federal Power Commission's Opinion and Order.

Second

Part I of the Act.

That the Opinion of the Commission of the State of California on page 16 of its opinion, cites Section 16 of Nevada Statutes 1925, but is apparently unadvised with respect to Section 2 of said act excluding Nevada Public Service Jurisdiction, which reads as follows:

> "Section 2. The board of county commissioners * * * shall have authority to enter into any and all necessary contracts with any person, firm or corporation, *either within or without the State of Nevada*, for the purchase of electric energy and current * * *

Part II of the Act

The exemption under section 201 (f) may be construed to exempt Mineral County Power System from jurisdiction of the Federal Power Commission but no citation of authority appears showing or indicating an exemption as to the California Electric Power Company.

[fol. 10] Conclusion

It is submitted that the errors above stated are such that a rehearing ought to be granted so that proceedings under Application No. 28791, 1st and 2nd Supplemental, may be held in abeyance until a final determination of the question of jurisdiction in pending proceedings has been reached in the Federal Courts.

Respectfully submitted, L. E. Blaisdell, Mineral County District Attorney and Ex-Officio Attorney for Mineral County Power System.

Dated: This 19th day of July, 1951, Hawthorne, Nevada.

[fol. 11] *Duly sworn to by L. E. Blaisdell. Jurat omitted in printing.*

[fol. 12] Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by mailing a copy thereof properly addressed, with postage prepaid, to:

Henry W. Coil, Esq., c/o California Electric Power Company, Riverside, California, Attorney for California Electric Power Company.

Hamilton Treadwell, Esq., Bureau of Yards & Docks, Navy Department, Washington, D. C., Attorney for Navy Department.

Howard F. Wahrenbrock, Esq., Federal Power Commission, Washington 25, D. C., Attorney for staff, Federal Power Commission.

Boris H. Lakusta, Esq., Public Utilities Commission of California, State Building, San Francisco 2, California, Counsel of Public Utilities Commission of California.

Dated at Hawthorne, Nevada, this 19th day of July, 1951.

L. E. Blaisdell, District Attorney and Ex-Officio, Attorney for the Mineral County Power System.

[fol. 13] AFFIDAVIT OF MAILING

STATE OF NEVADA,
County of Mineral, ss.

Dora M. Wilson being first duly sworn, deposes and says: That she is over the age of twenty-one, and not a party of interest herein; that on the 28th day of August, 1951, she served the foregoing document upon the Respondents in this proceedings, by mailing a copy thereof properly addressed, with postage prepaid, to:

California Electric Power Company, Riverside, California.

Public Utilities Commission of California, State Building, San Francisco 2, California.

S/ Dora M. Wilson.

Subscribed and sworn to before me this 28th day of August, 1951. (S.) J. J. Connelly, Notary Public, State of Nevada. My Commission expires: June 10, 1954. (Seal.)

[fol. 14] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S. F. No. 18464

THE COUNTY OF MINERAL, STATE OF NEVADA, a political subdivision of the State of Nevada, Petitioner,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, and THE CALIFORNIA ELECTRIC POWER COMPANY, a corporation, Respondent

ANSWER OF PUBLIC UTILITIES COMMISSION OF CALIFORNIA TO PETITION FOR WRIT OF REVIEW—Filed October 8, 1951

The Public Utilities Commission herewith respectfully submits its answer to the two petitions for writ of review herein. Each challenges the Commission's Decision No. 45913, issued July 3, 1951. (The decision is appended as Exhibit A to the petition for a writ filed by the United States.) While the grounds alleged in the two petitions [fol. 15] correspond only in part and while there are substantial factual differences relating to each petitioner which had to be given effect by the Commission in issuing its decision, the same basic argument dominates both petitions, viz., that the California Commission was without authority to render the decision it did, being precluded by the interstate commerce clause (Federal Const., Art. I, Sec. 8) and the Federal Power Act (1935, c. 687, 49 Stat. 841, 16 U. S. C. A., Sec. 791, et seq.). This circumstance suggests the appropriateness of a single document in answer to both petitions. It appears that needless repetition can thereby be avoided and the pattern of the Commission's reasoning more clearly set forth. The Court's acceptance of a single answer is, therefore, respectfully sought.

Quite simply the decision under attack did two things:

(1) it *authorized* California Electric Power Company to charge certain electric rates to the Navy Department for sales at Mill Creek, California, the energy to be transported by the Navy from Mill Creek to Nevada for use of the Naval Ammunition Depot at Hawthorne; (2) it